Message

From: Unruh Cohen, Ana (Markey) [Ana_UnruhCohen@markey.senate.gov]
Sent: 4/11/2016 7:57:47 PM
To: Brown, Tristan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2524f58c2f0442cbbd025cdcbd4d1f7e-Hilton, Tri]; Rennert, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7f2f3c03de64d6993bb1e08ec7e0eac-Rennert, Ke]
Subject: FW: TESTIMONY: Subcommittee Hearing on Small Businesses' Perspectives of EPA Regulations
Attachments: Buchanan Testimony.pdf; Reichert testimony.pdf; Sullivan Testimony.pdf

Hey guys – in case you are interested in the testimony for the hearing tomorrow. Second email with the rest to follow.
Ana

From: Glennon, John (EPW)
Sent: Monday, April 11, 2016 10:42 AM
To: Aguirre, Paloma (Booker); Baugh, Jordan (Gillibrand); Baumann, Jeremiah (Merkley); Beaton, Alex (Sanders); Bogdanoff, Alec (Markey); Castaldo, Keith (Gillibrand); Chapman, Kyle (Boxer); Clement, Anne (Boxer); Deveny, Adrian (Merkley); Driscoll, Laura (Gillibrand); Enderle, Emily (Whitehouse); Freedhoff, Michal (Markey); Gillam, Laura Haynes (Carper); Goldner, Aaron (Whitehouse); Gray, Morgan (Markey); Greene, Daniel (Markey); Handelsman, Dylan (Whitehouse); Hoyos, Andres (Gillibrand); Ingram, Amir (Carper); Jacobs, Ann (Cardin); Jamison, Brooke (Gillibrand); Joseph, Avenel (Markey); Klapper, Matt (Booker); Lee, Unjin (Booker); Leibman, Adena (Whitehouse); Maxwell, Gray (Cardin); Mulvenon, Ryan (Reid); Najera, Alesandra (Boxer); Paczkowski, Karen (Markey); Poirier, Bettina (EPW); Reott, Jason (Sanders); Schiller, Laura (Boxer); Shine, Andrew (Carper); Slevin, Chris (Booker); Spain, Emily (Carper); Spikes, Matthew (Cardin); Stevens, Mae (Cardin); Thomas, Katie (Sanders); Thomson, Matt (Booker); Tulou, Christophe (Carper); Unruh Cohen, Ana (Markey); Ward, Rebecca (Merkley); Weinstein, David (Sanders); Wender, Joseph (Markey); Wolfe, Michael (Cardin); Wong, Gifford (Whitehouse); Zipkin, Adam (Booker); Atcheson, Laura (Cornyn); Balash, Joe (Sullivan); Barlow Richardson, Michelle (Wicker); Beares, Ellen (Wicker); Billingsley, Kaylan (Capito); Borck, Tom (Budget); Brittingham, Charles (Vitter); Brubaker, Joel (Capito); Brunner, Jan (Capito); Carr, Kerrie (Sessions); Chatterjee, Neil (McConnell); Clifford, Brian (Barrasso); Clowser, Jessica (Fischer); Cole, Becky (Budget); Contreni, Maureen (SLC); Cormier, Ward (SBC); Dearborn, Rick (Sessions); Edwards, Deanna (SLC); Elam, Erik (Sullivan); Elsner, Brandon (Wicker); Flanz, Ken (Crapo); Foster, Bob (Wicker); Fraser, Bobby (Fischer); Glover, Kaitlynn (Barrasso); Hack, Joe (Fischer); Harris, Jimmy (Boozman); Helton, Samantha (Wicker); Henry, Peter (Sullivan); Higgins, Stephen (Fischer); Holland, Luke (Inhofe); Jackson, Ryan (Inhofe); Johnson, MaryMargaret (Wicker); Johnson-Weider, Michelle (SLC); Kobes, Jonathan (Rounds); Kominsky, Mitchell (RPC); Kunsman, Dan (Barrasso); Leggett, Matt (RPC); Lorensen, Will (Capito); Luff, Sandy (Sessions); Memmott, Justin (Barrasso); Middleton, Brandon (Sessions); Moore, Philip (Boozman); Pearce, Sarah (Portman); Rickman, Gregg (Rounds); Robinson, Sierra (Crapo); Sarnecky, Jane (Wicker); Schenck, Alex (Sullivan); Skjonsberg, Rob (Rounds); Stanley, Chris (Vitter); Stegner, Peter (Crapo); Sterne, Kate (Cornyn); Stewart, Bryn (Barrasso); Tharpe, Amanda (Rounds); Tomanelli, Luke (SBC); Tomlinson, Adam (Capito); Wright, Jennie (Inhofe); Ziegler, Charles (Barrasso); Albritton, Jason (EPW); Bacher, Kathryn (EPW); Chapman, Steve (EPW); Dohrmann, Andrew (EPW); Finks, LaVern (EPW); Fox, Thomas (EPW); Gilman, Kate (EPW); Gordon, Alicia (EPW); Illston, Ted (EPW); Kerr, Mary (EPW); Kramer, Drew (EPW); Kunkle, Sonya (EPW); MacCarthy, Colin (EPW); Mack, Carolyn (EPW); Mesnikoff, Ann (EPW); Napoliello, David (EPW); Phipps, Rae Ann (EPW); Rushforth, Tyler (EPW); Baum, Kristina (EPW); Bodine, Susan (EPW); Bolen, Brittany (EPW); Boyajian, Shant (EPW); Brittingham, Charles (EPW); Brown, Byron (EPW); Brown, Joe (EPW); Burhop, Anna (EPW); Caputo, Annie (EPW); Glennon, John (EPW); Gunasekara, Mandy (EPW); Hall, Amanda (EPW); Harder, Donelle (Inhofe); Herrgott, Alex (EPW); Jackson, Ryan (EPW); Karakitsos, Dimitri (EPW); Letendre, Daisy (EPW); Neely, Andrew (EPW); Olsen, Elizabeth (EPW)
Subject: TESTIMONY: Subcommittee Hearing on Small Businesses' Perspectives of EPA Regulations

Hello all –

Attached are the following testimonies received for tomorrow's Subcommittee hearing entitled, "American Small Businesses' Perspectives on Environmental Protection Agency Regulatory Actions."

- Tom Buchanan, President, Oklahoma Farm Bureau Federation
- Thomas M. Sullivan, Of Counsel, Nelson Mullins Riley & Scarborough LLP

- Dr. Emily Reichert, CEO, Greentown Labs

Sincerely,

John J. Glennon
Majority Research Assistant
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
(202) 224-0146

Nelson Mullins

Testimony of
Thomas M. Sullivan

United States Senate
Committee on Environment and Public Works
Subcommittee on Superfund, Waste Management, and Regulatory Oversight

April 12, 2016

American Small Businesses' Perspectives on Environmental Protection Agency Regulatory Actions

Mr. Chairman and Members of the Subcommittee, I am pleased to present my views on how U.S. Environmental Protection Agency (EPA) rules impact small business. The bulk of my testimony will actually cover how small businesses impact EPA rules. Or, at least, how the Regulatory Flexibility Act is designed to ensure that small business has a voice in the process.[1]

I am an attorney with the law firm of Nelson Mullins Riley & Scarborough, LLP. I represent several businesses and run the Coalition for Responsible Business Finance – a group of small businesses that are trying to educate Congress and the federal government on how non-traditional lending provides tremendous value for small businesses and the economy. The businesses I represent are concerned with how regulation impacts their bottom-lines, whether they will be treated fairly by regulators, and whether they will have a legitimate seat at the regulatory policy table. However, I am not presenting this testimony directly on my clients' behalf. Rather, my advice to the Subcommittee today is drawn from my two decades of work on small business regulatory issues and my overall desire to bolster the voice of small business in the regulatory process.

My first job in Washington was with the EPA. I served under both Administrator Bill Reilly and Administrator Carol Browner. After learning about regulatory policy development from within government, I joined the Washington office of the National Federation of Independent Business (NFIB). I am most proud of NFIB's campaign, working with this Committee, to prevent small businesses from being sued under the Superfund law just because they sent household garbage to their local landfill. That was the story of Barbara Williams of Gettysburg, Pennsylvania who I

[1] Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980), amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified as amended at 5 U.S.C. sec. 601-612), also amended by Sec. 1100 G of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 2112 (July 21, 2010).

was honored to be with when President George W. Bush signed the small business superfund bill on January 11, 2002.[2]

Later that month, I was unanimously confirmed to head the Office of Advocacy at the U.S. Small Business Administration (SBA). The Office of Advocacy is responsible for overseeing the Regulatory Flexibility Act.[3] I served as Chief Counsel for Advocacy until October 2008. During my tenure, the Office of Advocacy issued approximately 300 public comment letters to 60 agencies (averaging 38 per year).

I have remained deeply interested in how small businesses are impacted by regulation and how small business involvement in regulatory decision-making can benefit regulatory policy. I serve as an advisor for NFIB's Small Business Legal Center and for the SBE Council's Center for Regulatory Solutions and I am trying to create the Small Business Regulation Committee for the American Bar Association's Section on Administrative Law and Regulatory Practice. I also serve on the Board of Directors for the Public Forum Institute which is involved in the Policy Dialogue on Entrepreneurship, the Global Entrepreneurship Week initiative, and the Global Entrepreneurship Congress. The most recent congress was held last month in Medellin, Colombia and I was honored to participate.

History of the Regulatory Flexibility Act

One of the top five recommendations from the 1980 White House Conference on Small Business was for a law requiring regulatory impact analysis and a regular review of regulations. That recommendation became a reality when President Jimmy Carter signed the Regulatory Flexibility Act into law on September 19, 1980.

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[2] *Small Business Liability Relief and Brownfields Revitalization Act*, Pub. L. No. 107-118, 115 Stat. 2356 (2002).

[3] *See* http://www.sba.gov/advocacy.

The rationale for passage of the Regulatory Flexibility Act in 1980 still exists today. That rationale is based on the critical role small businesses play in our economy and an understanding of how small firms are disproportionately impacted by regulation (research-based proof that "one-size-does-not-fit-all"). Recent data show that small firms create almost 2/3 of the net new jobs in this country and that small businesses lead America's innovation economy, producing 16 times more patents per employee than their larger business competitors.[4] At the same time, research shows that the $2.028 trillion cost of federal government regulations hits small businesses the hardest.[5] Small businesses with fewer than 50 employees shoulder $11,724 per employee per year to keep up with regulatory mandates.[6] That is more than twice the cost of healthcare.[7] Plus, the costs for small firms are 29 percent higher per employee than for firms with 100 or more employees. The disproportionate regulatory impact is even more pronounced for environmental regulations where small firms bear over 3 times the costs per employee than their larger business competitors.[8]

Those reasons led to the enactment of the Regulatory Flexibility Act in 1980. The Act directs all agencies that use notice and comment rulemaking to publicly disclose the impact of their regulatory actions on small entities and to consider less burdensome alternatives if a proposal is likely to impose a significant economic impact. The law authorizes SBA's Chief Counsel for Advocacy to appear as amicus curiae in Regulatory Flexibility Act challenges to rulemakings and it requires SBA's Office of Advocacy to report annually on agencies' compliance with the Regulatory Flexibility Act.

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[4] *Frequently Asked Questions,* SBA Office of Advocacy (updated March 2014).
[5] W. Mark Crain and Nicole V. Crain, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business* (September 10, 2014).
[6] *Id,* at page 2.
[7] ASPE Research Brief, U.S. Department of Health and Human Services, *Health Insurance Marketplaces 2016: Average Premiums After Advance Premium Tax Credits in the 38 States Using the Healthcare.gov Eligibility Platform,* at table 2 (estimating costs of $408 per month) (January 21, 2016).
[8] Crain & Crain at page 2 (annual costs per employee for firms with under 50 employees is $3,574 and costs per employee for firms with 100 or more employees is $1,014).

From the time of enactment up to 1995, agency attention to the Regulatory Flexibility Act was disappointing and committees in the U.S. House of Representatives held hearings and drafted amendments to strengthen the Regulatory Flexibility Act.[9] The Small Business Regulatory Enforcement Fairness Act (SBREFA) passed Congress and was signed into law by President Clinton in March of 1996.[10] Those amendments to the Regulatory Flexibility Act established formal procedures for the EPA and for the Occupational Safety and Health Administration (OSHA) to receive input from small entities prior to the agencies proposing rules.[11]

Early in my tenure as Chief Counsel, there was a realization that government could still do a better job incorporating small business considerations into rulemaking. We felt that in order to change the attitudes of regulators, direction had to come from the top. That led to President George W. Bush signing Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, in August of 2002.[12] The Executive Order directed SBA's Office of Advocacy to train regulatory agencies on how to comply with the Regulatory Flexibility Act and further instructed agencies to consider the Office of Advocacy's comments on proposed rules. More recently, the Small Business Jobs Act codified the Executive Order's requirements for agencies to respond to the Office of Advocacy's comments in final rules.[13]

The latest amendments to the Regulatory Flexibility Act were authored by Senators Olympia Snowe and Mark Pryor and were adopted as part of the Dodd-Frank financial regulatory reform law. That amendment requires the Consumer Financial Protection Bureau (CFPB) to conduct a

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[9] *See, e.g., Strengthening the Regulatory Flexibility Act: Hearing on H.R. 9 before H. Comm. On Small Business*, 104th Cong., Serial No. 104-5 (Jan. 23, 1995); *Job Creation and Wage Enhancement Act of 1995: Hearing on H.R. 9 Before the Subcomm. On Comm. And Admin. Law of the H. Comm. On the judiciary*, 104th Cong. Serial No. 104-3 (Feb. 3 & 6, 1995).

[10] *Small Business Regulatory Enforcement Fairness Act of 1996*, Pub. L. No. 104-121, 110 Stat. 857 (1996).

[11] *See,* 5 U.S.C. sec. 609.

[12] Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 Fed. Reg. 53461 (August 16, 2002).

[13] *Small Business Jobs Act of 2010*, Pub. L. No. 111-240, sec. 1601 (September 7, 2010).

small business panel process ("SBREFA panels") when issuing rules, the same requirement that EPA and OSHA have followed since SBREFA passed in 1996.[14]

What is required by the Regulatory Flexibility Act

The basic spirit of the Regulatory Flexibility Act is for government agencies to analyze the effects of their regulatory actions on small entities and for those agencies to consider alternatives that would allow agencies to achieve their regulatory objectives without unduly burdening small entities.

The Regulatory Flexibility Act covers all agencies that issue rules subject to the Administrative Procedure Act (APA). The Regulatory Flexibility Act requires agencies to publish an initial regulatory flexibility analysis (IRFA) unless the promulgating agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[15] The IRFA is supposed to be a transparent small business impact analysis that includes a discussion of alternatives designed to accomplish the stated objectives of the rule while minimizing impact on small entities. In the case of EPA, OSHA, and the CFPB, the SBREFA panels aid the agencies' analysis and discussion of alternatives. Each SBREFA panel produces a report that includes a small business economic analysis and a detailed exchange of information between the promulgating agency and small entities

The availability of an IRFA allows for a more informed notice and comment process that can guide an agency's formulation of its final rule. Under the Regulatory Flexibility Act, an agency's final rule must contain a final regulatory flexibility analysis (FRFA) if it published an IRFA with its proposal. The FRFA is basically a public response to issues raised in the IRFA.

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[14] *Dodd-Frank Wall Street Reform and Consumer Protection Act,* Pub. L. No. 111-203, sec. 1100G (July 21, 2010).

[15] *See*, 5 U.S.C. sec. 605(b).

Regulatory Flexibility Act in practice.

SBA's Office of Advocacy monitors implementation of the Regulatory Flexibility Act and a full accounting of how agencies are complying with the Act is published annually.[16] Every annual report contains a section on the Office of Advocacy's interaction with the EPA, which should be no surprise because of how much of the federal regulatory burden emanates from EPA. The National Association of Manufacturers study on regulatory burden reported that small manufacturers with 50 employees or less pay an estimated $34,671 per employee to comply with federal regulation.[17] Environmental regulatory costs account for $20,361 of the total (more than half of the total costs are from environmental regulation).

Good news/bad news

The good news is that EPA regularly works with SBA's Office of Advocacy and hosts SBREFA panels to explore how the agency can sensitize its regulatory approach to small business. It is encouraging that EPA is willing to hold "pre-panel" sessions with small business stakeholders in order to think through issues they may not have anticipated in developing a rulemaking. I was involved with a pre-panel for EPA's approach to reduce lead-based paint hazards from renovation and repair of commercial buildings. I represented small businesses in the remodeling industry and I was impressed by EPA's willingness to consider the remodelers' views, learn from their experiences in complying with residential lead-paint rules, and then hit the "pause button" to do the research necessary before proceeding down a full-blown regulatory path. I am told that EPA's "pre-panel" approach has benefitted the small business community and career officials at EPA who are genuinely listening and learning about issues without the internal agency pressure of having to necessarily promulgate a final regulation by a date certain.

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[16] *See,* Office of Advocacy annual reports on the Regulatory Flexibility Act, available at https://www.sba.gov/advocacy.

[17] Crain & Crain at page 2.

The bad news is that there are still times when EPA's deadlines, whether they are judicial, statutory, or political, push the careerists to approach the Regulatory Flexibility Act as a set of bureaucratic procedural hurdles. The most obvious example of EPA purposely avoiding the Regulatory Flexibility Act was its recent promulgation of the "Waters of the U.S." rule. The EPA and the U.S. Army Corps of Engineers (the "Corps") certified that the proposed rule would not have a significant economic impact on a substantial number of small businesses. EPA argued that their proposal would not expand jurisdiction, but would narrow the jurisdiction of the Clean Water Act.[18] To EPA's credit, the agency had worked with SBA's Office of Advocacy for several years and had engaged directly with small business stakeholders. According to testimony by Charles Maresca, who heads the Office of Advocacy's legal team, the Corps met with small entities well before issuing the proposed rule on April 21, 2014.[19]

Unfortunately, EPA did not seem to listen to those small business interests and instead concocted an argument that its rule would not impose additional costs on small businesses. Mr. Maresca pointed out that EPA's own economic analysis estimated a range of permit cost increases from $19.8 - $52 million dollars annually and that wetlands mitigation costs would rise between $59.7 - $113.5 million annually. That background suggests to me that EPA made a deliberate decision to avoid the transparent and constructive dialogue with small entities required by SBREFA when pushing forward with the Waters of the U.S. rulemaking.

How can the Regulatory Flexibility Act work better?

The Regulatory Flexibility Act requires EPA to analyze the direct impact a rule will have on small entities. Unfortunately, limiting the analysis to direct impacts does not accurately portray how small entities are affected by new EPA rules. For instance, when greenhouse gas

[18] *Definition of Waters of the United States Under the Clean Water Act*, 79, Fed. Reg. 22188 (April 21, 2014).

[19] Testimony of Charles Maresca, Director of Interagency Affairs, Office of Advocacy, U.S. Small Business Administration, *An Examination of Proposed Environmental Regulation's Impacts on America's Small Businesses*, United States Senate Committee on Small Business and Entrepreneurship (May 19, 2015).

regulations impose a direct cost on an electric utility, EPA should make public how its proposal will likely affect the cost of electricity for small businesses and include that analysis as part of its work to meet the goals of the Regulatory Flexibility Act. The process works when there is a transparent and candid exchange of views between small business stakeholders and regulators. That exchange works best when small business stakeholders have as much information as possible and I believe that not including analysis of reasonably foreseeable indirect impacts harms the process.

The SBREFA amendments to the Regulatory Flexibility Act in 1996 established the SBREFA panels and have helped force a dialogue between EPA and small business stakeholders. Unfortunately, the process lacks transparency because EPA does not release the SBREFA panel report that must be completed in 60 days, until EPA issues its proposed rule. The time between a completed SBREFA panel report and EPA's proposed rule can be several months or several years. Keeping the valuable small business input secret and hiding the candid exchange of information between EPA and business stakeholders is a disservice to the development of regulatory policy that depends on a robust public exchange of information, even before the formal notice and comment period. I am not promoting the release of confidential interagency information that is a necessary part of the rulemaking process. However, once a SBREFA panel report is finished it is no longer a deliberative process document that deserves to be kept confidential. Regulators should continue to think about ways to improve their proposed regulations, all the way up to publishing their proposed rules. Hiding part of an agency's exchange with the regulated community stifles EPA's ability to gain informed insight up to the date of a proposed rule's publication. OSHA is subject to the same SBREFA panel requirements as EPA and OSHA releases their SBREFA panel reports as soon as they are completed. I think that if EPA changes its policy to mimic OSHA's, they will benefit from a more transparent SBREFA process.

Finally, I am troubled by what happened with EPA's Waters of the U.S. rule and how its avoidance of the Regulatory Flexibility Act (certification that the rule would not significantly

impact a substantial number of small entities in April 2014) could not be challenged until the rulemaking was finalized a year later. EPA's decision on whether it should conduct a full examination of small business impacts and alternatives is a critical point in the rulemaking process. The "certification" part of the Regulatory Flexibility Act is truly the fork in the road when it comes to whether EPA should listen to small businesses and tailor its regulatory approach to accommodate small firms. I believe that Congress, the EPA, and the Office of Advocacy should consider ways in which EPA's certification would benefit from an objective third party's judgment when the Office of Advocacy has an objection. When agencies quarrel over their impact on the environment, the Council on Environmental Quality (CEQ) acts as an arbiter.[20] Some thought should be given on whether a similar model could work for disagreements between the Office of Advocacy and regulatory agencies covered by the Regulatory Flexibility Act.

Conclusion:

EPA makes its best decisions when it decides to embrace the Regulatory Flexibility Act and treat its interaction with small business as a constructive dialogue where the agency can meet its statutory objectives while also minimizing burden on small businesses. It can work. I have seen it work. And, I thank the Committee for taking the time to make sure it can work better.

[20] EPA's description of how a federal agency may refer to CEQ interagency disagreements concerning proposed federal actions that might cause unsatisfactory environmental effects is viewable at: https://www.epa.gov/nepa/what-national-environmental-policy-act.

Message

From: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Sent: 4/8/2016 4:02:15 PM
To: Borum, Denis [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f385dc95b8714c7cb74334eed0e1474d-DBorum]
CC: Davis, CatherineM [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9977d3119e394dcf9cf819e79b52992b-Davis, Catherine]; Brown, Tristan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2524f58c2f0442cbbd025cdcbd4d1f7e-Hilton, Tri]; Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Klasen, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d5ba7959ebd4929ab5ab57fba80b21d-MKlasen]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: Additional TA Requests
Attachments: BILLS-111s1005rs.pdf; BILLS-114s1642is.pdf

We would like TA on the attached bill – S. 1642, Water Supply Cost Savings Act. Written TA later next week is fine.

In addition, we are looking at S. 1005, which EPW reported in 2009. Because of subsequent actions by Congress, some of the provisions in this bill are now obsolete, but we are reviewing to determine if any provisions are still worth pursuing. I still have EPA TA from our efforts on this bill in 2009, but if your staff want to review again and let us know if there are any issues, that would be great. We will be focusing on Titles I and II.

Calendar No. 109

111TH CONGRESS
1ST SESSION

S. 1005

[Report No. 111–47]

To amend the Federal Water Pollution Control Act and the Safe Drinking Water Act to improve water and wastewater infrastructure in the United States.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2009

Mr. CARDIN (for himself, Mrs. BOXER, Mr. INHOFE, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JULY 15, 2009

Reported by Mrs. BOXER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Federal Water Pollution Control Act and the Safe Drinking Water Act to improve water and wastewater infrastructure in the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Water Infrastructure Financing Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. DEFINITION OF ADMINISTRATOR.

In this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

TITLE I—WATER POLLUTION INFRASTRUCTURE

SEC. 101. TECHNICAL ASSISTANCE FOR RURAL SMALL TREATMENT WORKS AND MEDIUM TREATMENT WORKS.

(a) IN GENERAL.—Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) is amended by adding at the end the following:

"SEC. 222. TECHNICAL ASSISTANCE FOR RURAL SMALL TREATMENT WORKS AND MEDIUM TREATMENT WORKS.

"(a) DEFINITIONS.—In this section:

"(1) ADVANCED DECENTRALIZED WASTEWATER SYSTEM.—The term 'advanced decentralized wastewater system' means a decentralized wastewater system that provides more effective treatment than a conventional septic system.

"(2) DECENTRALIZED WASTEWATER SYSTEM.—

"(A) IN GENERAL.—The term 'decentralized wastewater system' means a wastewater treatment system that is at or near a site at which wastewater is generated.

"(B) INCLUSIONS.—The term 'decentralized wastewater system' includes a system that provides for—

"(i) nonpotable reuse of treated effluent; or

"(ii) energy and nutrient recovery from wastewater constituents.

"(3) MEDIUM TREATMENT WORKS.—The term 'medium treatment works' means a publicly owned treatment works serving more than 10,000 but fewer than 100,000 individuals.

"(4) QUALIFIED NONPROFIT TECHNICAL ASSISTANCE PROVIDER.—The term 'qualified nonprofit technical assistance provider' means a qualified nonprofit technical assistance provider of water and wastewater services to small or medium-sized communities that provides technical assistance (including circuit rider, multi-State regional assistance programs, and training and preliminary engineering evaluations) to owners and operators of small treatment works or medium treatment works that may include State agencies.

"(5) SMALL TREATMENT WORKS.—The term 'small treatment works' means a publicly owned

treatment works serving not more than 10,000 individuals.

"(b) GRANT PROGRAM.—

"(1) IN GENERAL.—The Administrator may make grants on a competitive basis to qualified nonprofit technical assistance providers that are qualified to provide assistance on a broad range of wastewater and stormwater approaches—

"(A) to assist owners and operators of small treatment works and medium treatment works to plan, develop, and obtain financing for eligible projects described in section 603(c) or 518(c);

"(B) to provide financial assistance, in consultation with the State in which the assistance is provided, to owners and operators of small treatment works and medium treatment works for predevelopment costs (including costs for planning, design, and associated preconstruction activities, such as activities relating directly to the siting of the facility and related elements) associated with stormwater or wastewater infrastructure projects or short-term costs incurred for equipment replacement that is not part of regular operation and main-

tenance activities for existing stormwater or wastewater systems, if the amount of assistance for any single project does not exceed $50,000;

"(C) to provide technical assistance and training for owners and operators of small treatment works and medium treatment works to enable those treatment works and systems to protect water quality and achieve and maintain compliance with this Act; and

"(D) to disseminate information to owners and operators of small treatment works and medium treatment works, with respect to planning, design, construction, and operation of treatment works, small municipal separate storm sewer systems, decentralized wastewater treatment systems, and advanced decentralized wastewater treatment systems.

"(2) DISTRIBUTION OF GRANT.—In carrying out this subsection, the Administrator shall ensure, to the maximum extent practicable, that technical assistance provided using funds from a grant under paragraph (1) is made available in each State.

"(3) CONSULTATION.—As a condition of receiving a grant under this subsection, a qualified nonprofit technical assistance provider shall agree to

consult with each State in which grant funds are to be expended before the grant funds are expended in the State.

"(4) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, a qualified nonprofit technical assistance provider that receives a grant under this subsection shall submit to the Administrator a report that—

"(A) describes the activities of the qualified nonprofit technical assistance provider using grant funds received under this subsection for the fiscal year; and

"(B) specifies—

"(i) the number of communities served;

"(ii) the sizes of those communities; and

"(iii) the type of assistance provided by the qualified nonprofit technical assistance provider.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

"(1) for grants for small treatment works, $25,000,000 for each of fiscal years 2010 through 2014; and

"(2) for grants for medium treatment works, $15,000,000 for each of fiscal years 2010 through 2014.".

(b) GUIDANCE FOR SMALL SYSTEMS.—Section 602 of the Federal Water Pollution Control Act (33 U.S.C. 1382) is amended by adding at the end the following:

"(c) GUIDANCE FOR SMALL SYSTEMS.—

"(1) DEFINITION OF SMALL SYSTEM.—In this subsection, the term 'small system' means a system—

"(A) for which a municipality or intermunicipal, interstate, or State agency seeks assistance under this title; and

"(B) that serves a population of not more than 10,000 individuals.

"(2) SIMPLIFIED PROCEDURES.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall assist the States in establishing simplified procedures for small systems to obtain assistance under this title.

"(3) PUBLICATION OF MANUAL.—Not later than 1 year after the date of enactment of this sub-

section, after providing notice and opportunity for public comment, the Administrator shall publish—

"(A) a manual to assist small systems in obtaining assistance under this title; and

"(B) in the Federal Register, notice of the availability of the manual.".

SEC. 102. PROJECTS ELIGIBLE FOR ASSISTANCE.

(a) IN GENERAL.—Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) is amended by striking subsection (c) and inserting the following:

"(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—

"(1) IN GENERAL.—Funds in each State water pollution control revolving fund shall be used only for providing financial assistance—

"(A) to a municipality or an intermunicipal, interstate, or State agency or a private treatment works or decentralized wastewater system that principally treats municipal wastewater or domestic sewage—

"(i) for construction of treatment works (as defined in section 212); or

"(ii) for capital costs associated with monitoring equipment for combined sanitary sewer overflows;

"(B) to implement measures to control, manage, reduce, treat, infiltrate, or reuse stormwater, the primary purpose of which is the preservation, protection, or enhancement of water quality to support public purposes (including the procurement and use of equipment to support minimum measures, such as street sweeping and storm drain system cleaning, or acquisition of other land and interests in land that are necessary for those activities and measures);

"(C) to implement a management program established under section 319;

"(D) to develop and implement a conservation and management plan under section 320;

"(E) for projects to increase the security of wastewater treatment works (as defined in section 212), excluding any expenditure for operations or maintenance;

"(F) to carry out water conservation or efficiency projects that result in direct water quality benefits;

"(G) to implement measures to integrate water resource management planning and implementation;

"(H) to carry out water reuse (including wastewater reuse), reclamation, and recycling projects that result in direct water quality benefits;

"(I) for projects to increase the energy efficiency of treatment works (as defined in section 212) that result in direct water quality benefits;

"(J) for the development and implementation of utility management improvement plans consistent with an effective utility management strategy (as defined in section 306(a) of the Water Infrastructure Financing Act); and

"(K) for the development and implementation of integrative watershed improvement plans that include cost-effective solutions that consider point and nonpoint sources of pollution and traditional and cost-saving water treatment and efficiency projects.

"(2) LIMITATION.—Not more than 5 percent of the amount of a capitalization grant of a State may be used during a fiscal year to provide assistance for activities described in subparagraph (J) or (K) of paragraph (1).

"(3) STATE WATER POLLUTION CONTROL REVOLVING FUNDS.—

"(A) IN GENERAL.—A State water pollution control revolving fund shall be established, maintained, and credited with repayments.

"(B) BALANCE OF FUND.—The balance of each fund described in subparagraph (A) shall be available in perpetuity for providing financial assistance under this section.".

(b) MODIFICATION OF DEFINITION.—Section 212(2)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1292(2)(A)) is amended—

(1) by striking "and any works, including site";

(2) by striking "is used for ultimate" and inserting "will be used for ultimate"; and

(3) by inserting "; and acquisition of other land and interests in land necessary for construction" before the period at the end.

SEC. 103. AFFORDABILITY.

(a) IN GENERAL.—Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) is amended—

(1) by redesignating subsections (e) through (h) as subsections (g) through (j), respectively;

(2) in subsection (d)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking ''20 years'' and inserting ''the lesser of 30 years or the design life of the project to be financed with the proceeds of the loan''; and

(ii) in subparagraph (B), by striking ''not later than 20 years after project completion'' and inserting ''upon the expiration of the term of the loan'';

(B) in paragraph (6), by striking ''and'' at the end; and

(C) in paragraph (7), by striking ''title, except that'' and all that follows and inserting the following: ''title, except that—

''(A) such amounts shall not exceed an amount equal to the sum of, for each fiscal year—

''(i) an amount equal to the greatest of—

''(I) $400,000;

''(II) 1/5 percent of the current valuation of the fund; or

''(III) 6 percent of all grant awards to the fund under this title for a fiscal year; and

"(ii) the amount of any fees collected by the State for that purpose, regardless of the source; and

"(B) as a source of revenue (restricted solely to interest earnings of the fund) or security for payment of the principal and interest on revenue or general obligation bonds issued by the State to provide matching funds under section 602(b)(2), if the proceeds of the sale of the bonds will be deposited in the fund."; and

(3) by inserting after subsection (d) the following:

"(e) ADDITIONAL ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

"(1) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term 'disadvantaged community' means a community with a service area, or portion of a service area, of a treatment works that meets affordability criteria established after public review and comment by the State in which the treatment works is located.

"(2) LOAN SUBSIDY.—Notwithstanding any other provision of this section, subject to paragraph (5), in a case in which the State makes a loan from the water pollution control revolving loan fund in ac-

cordance with subsection (c) to a disadvantaged community or a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization, including—

"(A) the forgiveness of all or a portion of the principal of the loan; and

"(B) a negative interest rate on the loan.

"(3) TOTAL AMOUNT OF SUBSIDIES.—For each fiscal year, the total amount of loan subsidies made by the State pursuant to this subsection may not exceed 30 percent of the amount of the capitalization grant received by the State for the fiscal year.

"(4) INFORMATION.—The Administrator may publish information to assist States in establishing affordability criteria described in paragraph (1).

"(f) COST-SAVING WATER TREATMENT AND EFFICIENCY IMPROVEMENTS.—

"(1) IN GENERAL.—Subject to subsection (c)(3), in providing a loan for a project under this section, a State may forgive repayment of a portion of the loan amount up to the percentage of the project that is devoted to alternative approaches to wastewater and stormwater controls (including nonstructural methods), such as projects that treat or

minimize sewage or urban stormwater discharges using—

"(A) decentralized or distributed stormwater controls;

"(B) advanced decentralized wastewater treatment;

"(C) low-impact development technologies and nonstructural approaches;

"(D) stream buffers;

"(E) wetland restoration and enhancement;

"(F) actions to minimize the quantity of and direct connections to impervious surfaces;

"(G) soil and vegetation, or other permeable materials;

"(H) actions that increase efficient water use, water conservation, or water reuse; or

"(I) actions that increase energy efficiency or reduce energy consumption at a treatment works.

"(2) TREATMENT OF LOAN FORGIVENESS.—The amount of loan forgiveness provided by a State under this subsection shall be—

"(A) credited to each State; and

"(B) deducted from the total amount of State capitalization grants for which matching funds are required from the State under section 602(b)(2).".

(b) CONFORMING AMENDMENT.—Section 221(d) of the Federal Water Pollution Control Act (33 U.S.C. 1301(d)) is amended in the second sentence by striking "603(h)" and inserting "603(j)".

SEC. 104. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) is amended by striking subsection (i) (as redesignated by section 103(a)(1)) and inserting the following:

"(i) PRIORITY SYSTEM REQUIREMENT.—

"(1) DEFINITIONS.—In this subsection:

"(A) RESTRUCTURING.—The term 'restructuring' means—

"(i) the consolidation of management functions or ownership with another facility; or

"(ii) the formation of cooperative partnerships.

"(B) TRADITIONAL WASTEWATER APPROACH.—The term 'traditional wastewater ap-

proach' means a managed system used to collect and treat wastewater from an entire service area consisting of—

"(i) collection sewers;

"(ii) a centralized treatment plant using biological, physical, or chemical treatment processes; and

"(iii) a direct point source discharge to surface water.

"(2) PRIORITY SYSTEM.—In providing financial assistance from the water pollution control revolving fund of the State, the State shall establish a priority system that—

"(A) takes into consideration appropriate chemical, physical, and biological data relating to water quality that the State considers reasonably available and of sufficient quality;

"(B) ensures that projects undertaken with assistance under this title are designed to achieve, as determined by the State, the optimum water quality management, consistent with the public health and water quality goals and requirements of this Act;

"(C) provides for public notice and opportunity to comment on the establishment of the

priority system and the summary under subparagraph (D); and

"(D) provides for the publication, not less than biennially in summary form, of a description of projects in the State that are eligible for assistance under this title that indicates—

"(i) the priority assigned to each project under the priority system of the State; and

"(ii) the funding schedule for each project, to the extent the information is available.

"(3) WEIGHT GIVEN TO APPLICATIONS.—After determining project priorities under subparagraph (2), the State shall give greater weight to an application for assistance if the application includes such information as the State determines to be necessary and contains—

"(A) a description of utility management best practices undertaken by a treatment works applying for assistance, including—

"(i) an inventory of assets, including a description of the condition of those assets;

"(ii) a schedule for replacement of the assets;

"(iii) a financing plan that factors in all lifecycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs; and

"(iv) a review of options for restructuring the treatment works;

"(B) approaches other than a traditional wastewater approach that treat or minimize sewage or urban stormwater discharges using—

"(i) decentralized or distributed stormwater controls;

"(ii) advanced decentralized wastewater treatment;

"(iii) low-impact development technologies and nonstructural approaches;

"(iv) stream buffers;

"(v) wetland restoration and enhancement;

"(vi) actions to minimize the quantity of and direct connections to impervious surfaces;

"(vii) soil and vegetation, or other permeable materials;

"(viii) actions that increase efficient water use, water conservation, or water reuse; or

"(ix) actions that increase energy efficiency or reduce energy consumption at a treatment works;

"(C) a demonstration of consistency with State, regional, and municipal watershed plans, water conservation and efficiency plans, or integrated water resource management plans;

"(D) a proposal by the applicant demonstrating flexibility through alternative means to carry out responsibilities under Federal regulations, that may include watershed permitting and other innovative management approaches, while achieving results that—

"(i) the State, in the case of a permit program approved under section 402, determines will meet permit requirements; or

"(ii) the Administrator determines are measurably superior, as compared to regulatory standards; or

"(E) projects that address adverse environmental conditions.".

SEC. 105. TRANSFERABILITY OF FUNDS.

Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) (as amended by section 103(a)(1)) is amended by adding at the end the following:

"(k) TRANSFER OF FUNDS.—

"(1) IN GENERAL.—The Governor of a State may—

"(A)(i) reserve not more than the greater of—

"(I) 33 percent of a capitalization grant made under this title; or

"(II) 33 percent of a capitalization grant made under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); and

"(ii) add the reserved funds to any funds provided to the State under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); and

"(B)(i) reserve for any year an amount that does not exceed the amount that may be reserved under subparagraph (A) for that year

from capitalization grants made under section 1452 of that Act (42 U.S.C. 300j–12); and

"(ii) add the reserved funds to any funds provided to the State under this title.

"(2) STATE MATCH.—Funds reserved under this subsection shall not be considered to be a State contribution for a capitalization grant required under this title or section 1452(b) of the Safe Drinking Water Act (42 U.S.C. 300j–12(b)).".

SEC. 106. NONCOMPLIANCE.

Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) (as amended by section 105) is amended by adding at the end the following:

"(l) NONCOMPLIANCE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no assistance (other than assistance that is to be used by a treatment works solely for planning, design, or security purposes) shall be provided under this title to the owner or operator of a treatment works that has been in significant noncompliance with any requirement of this Act for any of the 4 quarters during the preceding 8 quarters, unless the treatment works is in compliance with an enforceable administrative order to effect compliance with the requirement.

"(2) EXCEPTION.—An owner or operator of a treatment works that is determined under paragraph (1) to be in significant noncompliance with a requirement described in that paragraph may receive assistance under this title if the Administrator and the State providing the assistance determine that—

"(A) the entity conducting the enforcement action on which the determination of significant noncompliance is based has determined that the use of assistance would enable the owner or operator of the treatment works to take corrective action toward resolving the violations; or

"(B) the entity conducting the enforcement action on which the determination of significant noncompliance is based has determined that the assistance would be used by the owner or operator of the treatment works in order to assist owners and operators in making progress towards compliance.".

SEC. 107. NEGOTIATION OF CONTRACTS.

Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) (as amended by section 106) is amended by adding at the end the following:

"(m) NEGOTIATION OF CONTRACTS.—

"(1) IN GENERAL.—A contract to be carried out using funds directly made available by a capitalization grant under this section for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—

"(A) a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or

"(B) an equivalent State qualifications-based requirement (as determined by the Governor of the State).

"(2) EXEMPTION FOR SMALL COMMUNITIES.—Paragraph (1) shall not apply to a contract described in that paragraph for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services for a community of 10,000 or fewer individuals.".

SEC. 108. ALLOTMENT OF FUNDS.

Section 604 of the Federal Water Pollution Control Act (33 U.S.C. 1384) is amended by striking subsections (a) and (b) and inserting the following:

"(a) IN GENERAL.—Amounts authorized to be appropriated to carry out this section for each of fiscal years 2010 through 2014 shall be allotted among States by the Administrator in accordance with the percentages specified in the following table:

"State	Percentage
Alabama	0.012860
Alaska	0.007500
Arizona	0.010247
Arkansas	0.007500
California	0.079629
Colorado	0.010164
Connecticut	0.014150
Delaware	0.007500
District of Columbia	0.005000
Florida	0.044139
Georgia	0.012825
Hawaii	0.008048
Idaho	0.007500
Illinois	0.048540
Indiana	0.024633
Iowa	0.010266
Kansas	0.009129
Kentucky	0.012025
Louisiana	0.013465
Maine	0.007829
Maryland	0.025129
Massachusetts	0.025754
Michigan	0.033487
Minnesota	0.020385
Mississippi	0.009112
Missouri	0.028037
Montana	0.007500
Nebraska	0.008023
Nevada	0.007500
New Hampshire	0.007500
New Jersey	0.046117
New Mexico	0.007500
New York	0.103531
North Carolina	0.019007
North Dakota	0.007500
Ohio	0.054722
Oklahoma	0.008171
Oregon	0.012456
Pennsylvania	0.041484
Rhode Island	0.007500
South Carolina	0.007500
South Dakota	0.007500

"State	Percentage
Tennessee	0.011019
Texas	0.037664
Utah	0.007500
Vermont	0.007500
Virginia	0.020698
Washington	0.017588
West Virginia	0.011825
Wisconsin	0.022844
Wyoming	0.007500
Puerto Rico	0.005000
Territories	0.002500.

"(b) RESERVATION OF FUNDS.—

"(1) PLANNING.—Each State may reserve for each fiscal year to carry out planning under sections 205(j) and 303(e) an amount equal to the greater of—

"(A) 2 percent of the sums allotted to the State under this section for the fiscal year; or

"(B) $100,000.

"(2) INDIAN TRIBES.—Of the total amount of funds allotted to the State under this section for a fiscal year, 1.5 percent shall be allocated to Indian tribes (as defined in section 518(h)).

"(3) OPERATOR TRAINING.—Of the total amount of funds made available to carry out this title, for fiscal year 2009 and each fiscal year thereafter, the Administrator may reserve not more than $5,000,000 to carry out the objectives described in section 104(g).".

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

The Federal Water Pollution Control Act is amended by striking section 607 (33 U.S.C. 1387) and inserting the following:

"SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

"(1) $3,200,000,000 for each of fiscal years 2010 and 2011;

"(2) $3,600,000,000 for fiscal year 2012;

"(3) $4,000,000,000 for fiscal year 2013; and

"(4) $6,000,000,000 for fiscal year 2014.

"(b) AVAILABILITY.—Amounts made available under this section shall remain available until expended.

"(c) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under subsection (a) to carry out this title for a fiscal year, the Administrator may reserve not more than $1,000,000 for the fiscal year, to remain available until expended, to pay the costs of conducting needs surveys under section 516(b)(1)(B).".

SEC. 110. SEWER OVERFLOW CONTROL GRANTS.

(a) SEWER OVERFLOW CONTROL GRANTS.—Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) in subsection (a), by striking "IN GENERAL" and all that follows through "(2) subject to

subsection (g), the Administrator may'' and inserting the following:

''(a) IN GENERAL.—The Administrator may—

''(1) make grants to States for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows; and

''(2) subject to subsection (g),''; and

(2) by striking subsections (c) through (g) and inserting the following:

''(c) ADMINISTRATIVE REQUIREMENTS.—

''(1) IN GENERAL.—Subject to paragraph (2), a project that receives grant assistance under subsection (a) shall be carried out subject to the same requirements as a project that receives assistance from a State water pollution control revolving fund established pursuant to title VI.

''(2) DETERMINATION OF GOVERNOR.—The requirement described in paragraph (1) shall not apply to a project that receives grant assistance under subsection (a) to the extent that the Governor of the State in which the project is located determines that

a requirement described in title VI is inconsistent with the purposes of this section.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, to remain available until expended—

"(1) $250,000,000 for fiscal year 2010;

"(2) $300,000,000 for fiscal year 2011;

"(3) $350,000,000 for fiscal year 2012;

"(4) $400,000,000 for fiscal year 2013; and

"(5) $500,000,000 for fiscal year 2014.

"(g) ALLOCATION OF FUNDS.—

"(1) FISCAL YEAR 2010 AND 2011.—For each of fiscal years 2010 and 2011, subject to subsection (h), the Administrator shall use the amounts made available to carry out this section to provide grants to municipalities and municipal entities under subsection (a)(2)—

"(A) in accordance with the priority criteria described in subsection (b); and

"(B) with additional priority given to proposed projects that involve the use of—

"(i) nonstructural, low-impact development;

"(ii) water conservation, efficiency, or reuse; or

"(iii) other decentralized stormwater or wastewater approaches to minimize flows into the sewer systems.

"(2) FISCAL YEAR 2012 AND THEREAFTER.—For fiscal year 2012 and each fiscal year thereafter, subject to subsection (h), the Administrator shall use the amounts made available to carry out this section to provide grants to States under subsection (a)(1) in accordance with a formula that—

"(A) shall be established by the Administrator, after providing notice and an opportunity for public comment; and

"(B) allocates to each State a proportional share of the amounts based on the total needs of the State for municipal combined sewer overflow controls and sanitary sewer overflow controls, as identified in the most recent survey—

"(i) conducted under section 210; and

"(ii) included in a report required under section 516(b)(1)(B).".

(b) REPORTS.—Section 221(i) of the Federal Water Pollution Control Act (33 U.S.C. 1301(i)) is amended in the first sentence by striking "2003" and inserting "2011".

SEC. 111. CRITICAL WATER INFRASTRUCTURE PROJECTS.

(a) ESTABLISHMENT.—The Administrator shall establish a program under which grants are provided to eligible entities for use in carrying out projects and activities the primary purpose of which is watershed restoration through the protection or improvement of water quality.

(b) PROJECT SELECTION.—

(1) IN GENERAL.—The Administrator may provide funds under this section to an eligible entity to carry out an eligible project described in paragraph (3).

(2) EQUITABLE DISTRIBUTION.—The Administrator shall ensure an equitable distribution of projects under this section, taking into account cost and number of requests for each category listed in paragraph (3).

(3) ELIGIBLE PROJECTS.—A project that is eligible to be carried out using funds provided under this section may include projects that are included in the intended use plan of the State developed in accordance with section 606(c) of the Federal Water Pollution Control Act (33 U.S.C. 1386(c)).

(c) LOCAL PARTICIPATION.—In prioritizing projects for implementation under this section, the Administrator shall consult with, and consider the priorities of—

(1) affected State and local governments; and

(2) public and private entities that are active in watershed planning and restoration.

(d) Before carrying out any project under this section, the Administrator shall enter into an agreement with 1 or more non-Federal interests that shall require the non-Federal interests—

(1) to pay 45 percent of the total costs of the project, which may include services, materials, supplies, or other in-kind contributions;

(2) to provide any land, easements, rights-of-way, and relocations necessary to carry out the project; and

(3) to pay 100 percent of any operation, maintenance, repair, replacement, and rehabilitation costs associated with the project.

(e) WAIVER.—The Administrator may waive the requirement to pay the non-Federal share of the cost of carrying out an eligible activity using funds from a grant provided under this section if the Administrator determines that an eligible entity is unable to pay, or would experience significant financial hardship if required to pay, the non-Federal share.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000 for each of fiscal years 2010 through 2014.

TITLE II—SAFE DRINKING WATER INFRASTRUCTURE

SEC. 201. DRINKING WATER TECHNICAL ASSISTANCE FOR COMMUNITIES.

Section 1442(e) of the Safe Drinking Water Act (42 U.S.C. 300j–1(e)) is amended—

(1) in the first sentence, by striking ''The Administrator may provide'' and inserting the following:

''(1) PUBLIC WATER SYSTEMS.—The Administrator may provide'';

(2) in the second sentence, by striking ''Such assistance'' and inserting the following:

''(2) TYPES OF ASSISTANCE.—Such assistance'';

(3) in the third sentence, by striking ''The Administrator shall ensure'' and inserting the following:

''(3) AVAILABILITY.—The Administrator shall ensure'';

(4) in the fourth sentence, by striking ''Each nonprofit'' and inserting the following:

''(4) REQUIREMENT APPLICABLE TO NONPROFIT ORGANIZATIONS.—Each nonprofit''; and

(5) by striking the fifth sentence and all that follows and inserting the following:

"(5) PRIORITY.—In providing grants under this section, the Administrator shall give priority to small systems organizations that, as determined by the Administrator, in consultation with the State, are qualified and will be the most effective at assisting small systems.

"(6) WELLS AND WELL SYSTEMS.—

"(A) IN GENERAL.—The Administrator shall provide grants to nonprofit organizations to provide technical assistance to communities and individuals regarding the design, operation, construction, and maintenance of household wells and small shared well systems that provide drinking water.

"(B) FORM OF ASSISTANCE.—Technical assistance referred to in subparagraph (A) may include—

"(i) training and education;

"(ii) operation of a hotline; and

"(iii) the conduct of other activities relating to the design and construction of household, shared, and small water well systems in rural areas.

"(C) PRIORITY.—Subject to paragraph (5), in providing grants under this section, the Administrator shall give priority to applicants that, as determined by the Administrator—

"(i) are qualified; and

"(ii) have demonstrated experience in providing similar technical assistance and in developing similar projects.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph—

"(i) $7,000,000 for fiscal year 2010; and

"(ii) $7,500,000 for each of fiscal years 2011 through 2014.

"(7) FUNDING.—

"(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this subsection (other than paragraph (6)) $35,000,000 for each of fiscal years 2010 through 2014.

"(B) LOBBYING EXPENSES.—No portion of any State loan fund established under section 1452 and no portion of any funds made avail-

able under this subsection may be used for lobbying expenses.

"(C) INDIAN TRIBES.—Of the total amount made available under this section for each fiscal year, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.".

SEC. 202. PRECONSTRUCTION WORK.

Section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)) is amended—

(1) by designating the first, second, third, fourth, and fifth sentences as subparagraphs (A), (B), (D), (E), and (F), respectively;

(2) in subparagraph (B) (as designated by paragraph (1))—

(A) by striking "(not" and inserting "(including expenditures for planning, design, and associated preconstruction activities, including activities relating to the siting of the facility, but not"; and

(B) by inserting before the period at the end the following: "or to replace or rehabilitate aging treatment, storage, or distribution facilities of public water systems or provide for capital projects (excluding any expenditure for op-

erations and maintenance) to upgrade the security of public water systems''; and

(3) by inserting after subparagraph (B) (as designated by paragraph (1)) the following:

''(C) SALE OF BONDS.—Funds may also be used by a public water system as a source of revenue (restricted solely to interest earnings of the applicable State loan fund) or security for payment of the principal and interest on revenue or general obligation bonds issued by the State to provide matching funds under subsection (e), if the proceeds of the sale of the bonds will be deposited in the State loan fund.''.

SEC. 203. PRIORITY SYSTEM REQUIREMENTS.

Section 1452(b)(3) of the Safe Drinking Water Act (42 U.S.C. 300j–12(b)(3)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D);

(2) by striking subparagraph (A) and inserting the following:

''(A) DEFINITION OF RESTRUCTURING.—In this paragraph, the term 'restructuring' means changes in operations (including ownership, cooperative partnerships, asset manage-

ment, consolidation, and alternative water supply).

"(B) PRIORITY SYSTEM.—An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

"(i) address the most serious risk to human health;

"(ii) are necessary to ensure compliance with this title (including requirements for filtration);

"(iii) assist systems most in need on a per-household basis according to State affordability criteria; and

"(iv) improve the sustainability of systems.

"(C) WEIGHT GIVEN TO APPLICATIONS.—After determining project priorities under subparagraph (B), an intended use plan shall provide that the State shall give greater weight to an application for assistance by a community water system if the application includes such information as the State determines to be necessary and contains—

~~"(i) an inventory of assets, including a description of the condition of the assets;~~

~~"(ii) a schedule for replacement of assets;~~

~~"(iii) a financing plan that factors in all lifecycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs;~~

~~"(iv) a review of options for restructuring the public water system;~~

~~"(v) demonstration of consistency with State, regional, and municipal watershed plans;~~

~~"(vi) a water conservation plan consistent with guidelines developed for those plans by the Administrator under section 1455(a); and~~

~~"(vii) approaches to improve the sustainability of the system, including—~~

~~"(I) water efficiency or conservation;~~

~~"(II) use of reclaimed water; and~~

~~"(III) actions to increase energy efficiency."; and~~

(3) in subparagraph (D) (as redesignated by paragraph (1)), by striking ''periodically'' and inserting ''at least biennially''.

SEC. 204. AFFORDABILITY.

Section 1452(d)(3) of the Safe Drinking Water Act (42 U.S.C. 300j–12(d)(3)) is amended in the first sentence by inserting '', or portion of a service area,'' after ''service area''.

SEC. 205. SAFE DRINKING WATER REVOLVING LOAN FUNDS.

Section 1452(g) of the Safe Drinking Water Act (42 U.S.C. 300j–12(g)) is amended—

(1) paragraph (2)—

(A) in the first sentence, by striking ''4'' and inserting ''6''; and

(B) by striking ''1419,'' and all that follows through ''1993.'' and inserting ''1419.''; and

(2) by adding at the end the following:

''(5) TRANSFER OF FUNDS.—

''(A) IN GENERAL.—The Governor of a State may—

''(i)(I) reserve not more than the greater of—

"(aa) 33 percent of a capitalization grant made under this section; or

"(bb) 33 percent of a capitalization grant made under section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381);

"(II) add the funds reserved to any funds provided to the State under section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and

"(ii)(I) reserve for any fiscal year an amount that does not exceed the amount that may be reserved under clause (i)(I) for that year from capitalization grants made under section 601 of that Act (33 U.S.C. 1381); and

"(II) add the reserved funds to any funds provided to the State under this section.

"(B) STATE MATCH.—Funds reserved under this paragraph shall not be considered to be a State match of a capitalization grant required under this section or section 602(b) of the Federal Water Pollution Control Act (33 U.S.C. 1382(b)).".

SEC. 206. OTHER AUTHORIZED ACTIVITIES.

Section 1452(k)(2)(D) of the Safe Drinking Water Act (42 U.S.C. 300j–12(k)(2)(D)) is amended by inserting before the period at the end the following: ''(including implementation of source water protection plans)''.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

Section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) is amended by striking subsection (m) and inserting the following:

''(m) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

''(A) $1,500,000,000 for fiscal year 2010;

''(B) $2,000,000,000 for each of fiscal years 2011 and 2012;

''(C) $3,200,000,000 for fiscal year 2013; and

''(D) $6,000,000,000 for fiscal year 2014.

''(2) AVAILABILITY.—Amounts made available under this subsection shall remain available until expended.

''(3) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under paragraph (1) to carry out this section for a fiscal year, the Administrator may reserve not more than $1,000,000 per

year to pay the costs of conducting needs surveys under subsection (h).''.

SEC. 208. NEGOTIATION OF CONTRACTS.

Section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) is amended by adding at the end the following:

''(s) NEGOTIATION OF CONTRACTS.—

''(1) IN GENERAL.—A contract to be carried out using funds directly made available by a capitalization grant under this section for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—

''(A) a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or

''(B) an equivalent State qualifications-based requirement (as determined by the Governor of the State).

''(2) EXEMPTION FOR SMALL COMMUNITIES.—Paragraph (1) shall not apply to a contract described in that paragraph for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying,

mapping, or architectural or related services for a community of 10,000 or fewer individuals.''.

SEC. 209. CRITICAL DRINKING WATER INFRASTRUCTURE PROJECTS.

(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall establish a program under which grants are provided to eligible entities for use in carrying out projects and activities the primary purpose of which is to assist community water systems in meeting the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(b) PROJECT SELECTION.—A project that is eligible to be carried out using funds provided under this section may include projects that—

(1) develop alternative water sources;

(2) provide assistance to small systems; or

(3) assist a community water system—

(A) to comply with a national primary drinking water regulation; or

(B) to mitigate groundwater contamination, including saltwater intrusion.

(c) ELIGIBLE ENTITIES.—An entity eligible to receive a grant under this section is—

(1) a community water system as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f); or

(2) a system that is located in an area governed by an Indian Tribe (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f));

(d) PRIORITY.—In prioritizing projects for implementation under this section, the Administrator shall give priority to community water systems that—

(1) serve a community that, under affordability criteria established by the State under section 1452(d)(3) of the Safe Drinking Water Act (42 U.S.C. 300j–12), is determined by the State to be—

(A) a disadvantaged community; or

(B) a community that may become a disadvantaged community as a result of carrying out an eligible activity; or

(2) serve a community with a population of less than 10,000 individuals.

(e) LOCAL PARTICIPATION.—In prioritizing projects for implementation under this section, the Administrator shall consult with, and consider the priorities of, affected States, Indian Tribes, and local governments.

(f) COST SHARING.—Before carrying out any project under this section, the Administrator shall enter into a

binding agreement with 1 or more non-Federal interests that shall require the non-Federal interests—

(1) to pay 45 percent of the total costs of the project, which may include services, materials, supplies, or other in-kind contributions;

(2) to provide any land, easements, rights-of-way, and relocations necessary to carry out the project; and

(3) to pay 100 percent of any operation, maintenance, repair, replacement, and rehabilitation costs associated with the project.

(g) WAIVER.—The Administrator may waive the requirement to pay the non-Federal share of the cost of carrying out an eligible activity using funds from a grant provided under this section if the Administrator determines that an eligible entity is unable to pay, or would experience significant financial hardship if required to pay, the non-Federal share.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $230,000,000 for fiscal year 2010; and

(2) $300,000,000 for each of fiscal years 2011 through 2014.

SEC. 210. REDUCING LEAD IN DRINKING WATER.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term ''eligible entity'' means—

(A) a community water system (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f));

(B) a system located in an area governed by an Indian Tribe (as defined in that section);

(C) a nontransient noncommunity water system;

(D) a qualified nonprofit organization, as determined by the Administrator; and

(E) a municipality or State, interstate, or intermunicipal agency.

(2) LEAD REDUCTION PROJECT.—The term ''lead reduction project'' means a project or activity the primary purpose of which is to reduce the level of lead in water for human consumption by—

(A) replacement of publicly owned lead service lines;

(B) capital costs, testing, planning, or other relevant activities, as determined by the Administrator, to identify and address conditions (including corrosion control) that contribute to increased lead levels in water for human consumption;

(C) assistance to low-income homeowners to replace privately owned service lines, pipes, fittings, or fixtures that contain lead; and

(D) education of consumers regarding measures to reduce exposure to lead from drinking water or other sources.

(3) LOW-INCOME.—The term ''low-income'', with respect to an individual provided assistance under this section, has such meaning as may be given the term by the head of the municipality or State, interstate, or intermunicipal agency with jurisdiction over the area to which assistance is provided.

(4) MUNICIPALITY.—The term ''municipality'' means—

(A) a city, town, borough, county, parish, district, association, or other public entity established by, or pursuant to, applicable State law; and

(B) an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)).

(b) GRANT PROGRAM.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Adminis-

trator shall establish a grant program to provide assistance to eligible entities for lead reduction projects in the United States.

(2) EVALUATION.—In providing assistance under this section, the Administrator shall evaluate—

(A) whether an eligible entity applying for assistance has taken steps to identify the source of lead in water for human consumption; and

(B) the means by which the proposed lead reduction project would reduce lead levels in the applicable water system.

(3) PRIORITY APPLICATION.—In providing grants under this subsection, the Administrator shall give priority to an eligible entity that—

(A) carries out a lead reduction project at a public water system or nontransient noncommunity water system that has exceeded the lead action level established by the Administrator at any time during the 3-year period preceding the date of submission of the application of the eligible entity;

(B) addresses lead levels in water for human consumption at a school, daycare, or

other facility that primarily serves children or another vulnerable human subpopulation; or

(C) addresses such priority criteria as the Administrator may establish, consistent with the goal of reducing lead levels of concern.

(4) COST SHARING.—

(A) IN GENERAL.—Subject to subparagraph (B), the non-Federal share of the total cost of a project funded by a grant under this subsection shall be not less than 20 percent.

(B) WAIVER.—The Administrator may reduce or eliminate the non-Federal share under subparagraph (A) for reasons of affordability, as the Administrator determines to be appropriate.

(5) LOW-INCOME ASSISTANCE.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), an eligible entity may use a grant provided under this subsection to provide assistance to low-income homeowners to carry out lead reduction projects.

(B) LOW-INCOME ASSISTANCE CAP.—Of the funds made available to carry out this section, not more than $5,000,000 may be allocated to provide assistance to low-income home-

owners under this paragraph for any fiscal year.

(C) LIMITATION.—The amount of a grant provided to a low-income homeowner under this paragraph shall not exceed $5,000.

(6) SPECIAL CONSIDERATION FOR LEAD SERVICE LINE REPLACEMENT.—In carrying out lead service line replacement using a grant under this subsection, an eligible entity shall—

(A) notify customers of the replacement of any publicly owned portion of the lead service line;

(B) offer to replace the privately owned portion of the lead service line at the cost of replacement;

(C) recommend measures to avoid exposure to short-term increases in lead levels following a partial lead service line replacement; and

(D) demonstrate that the eligible entity has considered multiple options for reducing lead in drinking water, including an evaluation of options for corrosion control.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $60,000,000 for each of fiscal years 2010 through 2014.

TITLE III—MISCELLANEOUS

SEC. 301. DEFINITION OF ACADEMY.

In this title, the term ''Academy'' means the National Academy of Sciences.

SEC. 302. PROGRAM FOR WATER QUALITY ENHANCEMENT AND MANAGEMENT.

(a) INNOVATIVE TECHNOLOGY AND ALTERNATIVE APPROACHES GRANT PROGRAM.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator shall establish a program to provide grants to, and enter into contracts and cooperative agreements with, research institutions, institutions of higher education, National Laboratories, and other appropriate entities (including consortia of such institutions and entities), through a competitive process, in accordance with the plan developed under subsection (b), for research regarding, and development of the use of, innovative and alternative technologies to improve water quality, drinking water supply, or water use efficiency and conservation.

(2) TYPES OF PROJECTS.—In carrying out this subsection, the Administrator may select projects relating to such matters as innovative or alternative technologies, approaches, practices, or methods—

~~(A) to increase the effectiveness and efficiency of water and wastewater infrastructure through the use of integrated water resource management;~~

~~(B) to increase the effectiveness and efficiency of public water systems, including—~~

~~(i) source water protection;~~

~~(ii) water use reduction;~~

~~(iii) water collection, storage, and treatment and reuse of rainwater, stormwater, and graywater;~~

~~(iv) identification of behavioral, social, and economic barriers to achieving greater water use efficiency;~~

~~(v) use of watershed planning directed toward water quality, conservation, and supply;~~

~~(vi) actions to reduce energy consumption;~~

~~(vii) water treatment;~~

~~(viii) water distribution and wastewater collection systems;~~

~~(ix) desalination; and~~

~~(x) water security;~~

(C) to encourage the use of innovative or alternative technologies or approaches relating to water supply or availability;

(D) to increase the effectiveness and efficiency of new and existing treatment works, including—

(i) methods of collecting, treating, dispersing, reusing, reclaiming, and recycling wastewater;

(ii) system design;

(iii) nonstructural alternatives;

(iv) decentralized approaches;

(v) stormwater and wastewater reuse;

(vi) water use efficiency and conservation;

(vii) actions to reduce energy consumption;

(viii) technologies to extract energy from wastewater; and

(ix) wastewater security;

(E) to increase the effectiveness and efficiency of municipal separate storm sewer systems and combined sewer systems, including through the use of soil and vegetation or other permeable materials;

(F) to promote new water treatment technologies and management approaches, including commercialization and dissemination strategies for adoption of innovative water, wastewater, and stormwater technologies and management approaches or low-impact development technologies in the homebuilding industry; or

(G) to maintain a clearinghouse of technologies and management approaches developed under this subsection and subsections (c) and (d) at a research consortium or institute or other appropriate organization, as determined by the Administrator.

(3) FACTORS FOR CONSIDERATION.—In planning and implementing the program under this subsection, the Administrator shall take into consideration—

(A) research needs identified by water resource managers, State and local governments, and other interested parties; and

(B) technologies and processes likely to achieve the greatest increases in water quality, drinking water supply, or water use efficiency and conservation.

(4) MINORITY-SERVING INSTITUTIONS.—In carrying out the program under this subsection, the Administrator—

(A) may provide extramural grants to institutions of higher education; and

(B) shall encourage participation by minority-serving institutions.

(b) STRATEGIC RESEARCH PLAN.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator, in coordination with the heads of other appropriate Federal departments and agencies, shall develop a strategic research plan for the grant program under subsection (a).

(2) REQUIREMENTS.—

(A) COORDINATION.—The plan under paragraph (1) shall be carried out, to the maximum extent practicable, in coordination with other research and development strategic plans of the Environmental Protection Agency.

(B) CONTENTS.—The plan under paragraph (1) shall—

(i) describe, in outline form, research goals and priorities relating to an agenda of water quality, drinking water supply,

and water use efficiency and conservation, including—

(I) developing innovative water supply-enhancing processes and technologies;

(II) improving existing processes and technologies, including wastewater treatment, desalination, and groundwater recharge and recovery schemes;

(III) improving the effectiveness and efficiency of nontraditional wastewater treatment practices, including nonstructural alternatives, low-impact development techniques, and decentralized approaches; and

(IV) exploring concepts that extract energy from wastewater;

(ii)(I) identify current Federal water-related research efforts directed toward achieving the goals of improving water quality, water use efficiency, or water conservation or expanding water supply; and

(II) describe the means by which those efforts are coordinated with the pro-

~~gram established under subsection (a) in order to leverage resources and avoid duplication;~~

~~(iii) take into consideration the public health and environmental quality impacts and cost-effectiveness of each relevant technology and approach; and~~

~~(iv) take into consideration and incorporate, as appropriate, recommendations contained in reports and studies conducted by Federal departments and agencies, the National Research Council, the National Science and Technology Council, and other appropriate entities.~~

~~(3) SCIENCE ADVISORY BOARD REVIEW.—The Administrator shall submit the plan under paragraph (1) to the Science Advisory Board of the Environmental Protection Agency for review.~~

~~(4) REVISIONS.—The plan under paragraph (1) shall be revised and amended as necessary to reflect updated scientific findings and national research priorities.~~

~~(c) MUNICIPALITIES GRANT PROGRAM.—~~

~~(1) DEFINITION OF MUNICIPALITY.—In this subsection, the term "municipality" means—~~

(A) a city, town, borough, county, parish, district, association, authority, or other public entity established by, or pursuant to, State law; or

(B) an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)).

(2) ESTABLISHMENT.—Not later than 90 days after the date of publication of the initial report under subsection (c)(2), the Administrator shall establish a nationwide demonstration grant program—

(A) to promote innovations in technology and alternative approaches to water quality management or water supply developed under subsection (a); and

(B) to reduce costs to municipalities incurred in complying with the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and the Safe Drinking Water Act (42 U.S.C. 300f et seq.) through the approaches and technologies developed under subsection (a).

(3) SCOPE.—The demonstration grant program shall consist of up to 10 projects each year, to be carried out in municipalities selected by the Administrator under paragraph (5).

(4) APPLICATIONS.—A municipality that seeks to participate in the demonstration grant program established under this subsection shall submit to the Administrator a plan that—

(A) is developed in coordination with—

(i) the agencies of the State having jurisdiction over water quality and water supply matters; and

(ii) interested stakeholders, including institutions of higher education and related research institutions;

(B) describes water impacts specific to urban or rural areas;

(C) includes a strategy under which the municipality, through participation in the demonstration grant program, could effectively—

(i) address water quality or water supply problems; and

(ii) achieve the water quality goals that—

(I) could be achieved using more traditional methods; and

(II) are required under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) or the Safe

Drinking Water Act (42 U.S.C. 300f et seq.); and

(D) includes a schedule for achieving the water quality, water supply, or water use efficiency and conservation goals of the municipality.

(5) CATEGORIES OF PROJECTS.—

(A) IN GENERAL.—In carrying out the demonstration grant program, the Administrator shall provide grants for—

(i) projects relating to water supply, water quality, or water use efficiency and conservation matters described in subsection (a)(2); and

(ii) subject to subparagraph (B), not less than 2 projects for the incorporation into a building of the most current water use efficiency and conservation technologies and designs.

(B) PROJECTS FOR INCORPORATION.—

(i) INCREMENTAL COST LIMITATION.—A grant provided under subparagraph (A)(ii) may be used only to pay the incremental costs of incorporation into a

building of a water use efficiency and conservation technology or design.

(ii) TYPES OF BUILDINGS.—Of the projects for which grants are provided under subparagraph (A)(ii)—

(I) at least 1 shall be for a residential building; and

(II) at least 1 shall be for a commercial building.

(iii) PUBLIC AVAILABILITY.—The design of each building for which a grant is provided under subparagraph (A)(ii) shall be made available to the public, and each such building shall be accessible to the public for tours and educational purposes.

(6) RESPONSIBILITIES OF ADMINISTRATOR.—In providing grants for projects under this subsection, the Administrator shall—

(A) ensure, to the maximum extent practicable, that—

(i) the demonstration grant program under this subsection includes a variety of projects with respect to—

(I) geographical distribution;

(II) innovative technologies used for the projects; and

(III) nontraditional approaches (including low-impact development technologies) used for the projects; and

(ii) each category of project described in paragraph (5) is adequately represented;

(B) give higher priority to projects that—

(i) address multiple problems; and

(ii) are regionally applicable;

(C) ensure, to the maximum extent practicable, that at least 1 community having a population of 10,000 or fewer individuals receives a grant for each fiscal year; and

(D) ensure that, for each fiscal year, no municipality receives more than 25 percent of the total amount of funds made available for the fiscal year to provide grants under this subsection.

(7) COST SHARING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the non-Federal share of the total cost of a project funded by a grant under

this subsection shall be not less than 20 percent.

(B) WAIVER.—The Administrator may reduce or eliminate the non-Federal share of the cost of a project for reasons of affordability.

(d) INCORPORATION OF RESULTS AND INFORMATION.—

(1) TECHNOLOGY TRANSFER.—The Administrator, taking into consideration the results of the projects carried out using grants under subsections (a) and (c), shall—

(A) facilitate the adoption of technologies and processes to promote increased water quality, drinking water supply, and water use efficiency and conservation; and

(B) collect and disseminate information, including through the establishment of a publicly accessible clearinghouse, regarding those technologies and processes, including information on—

(i) incentives and impediments to development and commercialization;

(ii) best practices; and

(iii) anticipated increases in water quality, drinking water supply, and water

use efficiency and conservation resulting from the implementation of specific technologies and processes.

(2) INCORPORATION OF RESULTS AND INFORMATION.—To the maximum extent practicable, the Administrator shall incorporate the results of, and information obtained from, successful projects under this section into other programs administered by the Administrator.

(c) REPORTS.—

(1) REPORTS FROM GRANT RECIPIENTS.—A recipient of a grant under this section shall submit to the Administrator, on the date of completion of a project of the recipient and on each of the dates that is 1, 2, and 3 years after that date, a report that describes the effectiveness of the project.

(2) REPORTS TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, and not less frequently than once every 2 years thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committees on Transportation and Infrastructure and Energy and Commerce of the House of Representatives a report describing—

(A) the findings of each recipient of a grant under subsection (a) with respect to the identification of any potential new technology or management approach developed by the recipient; and

(B) the status and results of the grant program under subsection (e).

(f) WATER MANAGEMENT STUDY AND REPORT.—

(1) DEFINITIONS.—In this subsection:

(A) LOW-IMPACT APPROACH.—The term ''low-impact approach'' means a strategy that manages rainfall at the source using decentralized microscale controls to mimic the predevelopment hydrology of the relevant site by using a design technique that infiltrates, filters, stores, evaporates, and detains runoff close to the source.

(B) SOFT PATH APPROACH.—The term ''soft path approach'' means a general framework that encompasses—

(i) increased efficiency of water use;

(ii) integration of water supply, wastewater treatment, and stormwater management systems; and

(iii) protection, restoration, and effective use of the natural capacities of ecosystems to provide clean water.

(2) STUDY.—

(A) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Administrator shall enter into an arrangement with the National Academy of Sciences under which the Academy shall conduct a study, by not later than 2 years after that date, of innovative, effective, and systematic approaches for the management of water supply, wastewater, and stormwater.

(B) CONTENTS.—The study shall—

(i) be based on and enhance, to the maximum extent practicable, relevant studies previously conducted by the Academy;

(ii) focus in particular on soft-path approaches and low-impact approaches to the management described in subparagraph (A);

(iii) take into consideration the costs of each approach analyzed by the study;

(iv) examine and compare the state of research, technology development, and

emerging practices in other developed and developing countries with those in the United States;

(v) identify and evaluate relevant system approaches for comprehensive water management, including the interrelationship of water systems with other major systems, such as energy and transportation systems;

(vi) identify priority research and development needs; and

(vii) assess implementation needs and barriers.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $1,000,000 for the period of fiscal years 2010 through 2012.

(3) REPORT.—

(A) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Science and Technology of the House of Representatives a report de-

scribing the key findings of the study under paragraph (2).

(B) INCLUSIONS.—The report under subparagraph (A) shall include—

(i) an evaluation of relevant challenges and opportunities; and

(ii) recommendations for innovative and integrated solutions for use as a practical reference by water managers, planners, developers, scientists, engineers, nongovernmental organizations, Federal departments and agencies, and regulators.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $40,000,000 for each of fiscal years 2010 through 2014.

SEC. 303. AGRICULTURAL WATERSHED SUSTAINABILITY TECHNOLOGY GRANT PROGRAM.

(a) DEFINITIONS.—In this section:

(1) AGRICULTURAL COMMODITY.—The term ''agricultural commodity'' means—

(A) agricultural, horticultural, viticultural, and dairy products;

(B) livestock and the products of livestock;

(C) the products of poultry and bee raising;

(D) the products of forestry; and

(E) other commodities raised or produced on agricultural sites, as determined to be appropriate by the Secretary of Agriculture.

(2) AGRICULTURAL PROJECT.—The term ''agricultural project'' means an agricultural watershed sustainability technology pilot project that, as determined by the Administrator—

(A) is carried out at an agricultural site;

(B)(i) achieves demonstrable improvements in water quality that meet or exceed those mandated by statutory or regulatory requirements; or

(ii) improves water use efficiency; and

(C) will not substantially adversely affect agricultural commodity production, yield, profitability, or any other long-term environmental medium, including air and groundwater resources.

(3) AGRICULTURAL SITE.—The term ''agricultural site'' means a farming or ranching operation of a producer in the United States.

(4) PRODUCER.—The term ''producer'' means any person or group of persons (including an irrigation district and a drainage district) engaged in the

production and sale of an agricultural commodity that owns, or shares the ownership and risk of loss of, the agricultural commodity.

(5) REVOLVING FUND.—The term "revolving fund" means an agricultural watershed sustainability technology revolving fund—

(A) that is established by a State using amounts provided under subsection (b)(1);

(B) that is maintained and credited with repayments; and

(C) the balance of which shall be available in perpetuity for providing financial assistance.

(b) GRANTS FOR AGRICULTURAL STATE REVOLVING FUNDS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this section, the Administrator shall provide to each eligible State described in paragraph (2) 1 or more capitalization grants, that cumulatively equal no more than $1,000,000 per State, for use in establishing, within an agency of the State having jurisdiction over agriculture or environmental quality, an agricultural watershed sustainability technology revolving fund.

(2) ELIGIBLE STATES.—An eligible State referred to in paragraph (1) is a State that agrees,

prior to receipt of a capitalization grant under paragraph (1)—

(A) to establish, and deposit the funds from the grant in, a revolving fund;

(B) to provide, at a minimum, a State share in an amount equal to 20 percent of the capitalization grant;

(C) to use amounts in the revolving fund to make loans to producers in accordance with subsection (c); and

(D) to return amounts in the revolving fund if no loan applications are granted within 2 years of the receipt of the initial capitalization grant.

(c) LOANS TO PRODUCERS.—

(1) USE OF FUNDS.—A State that establishes a revolving fund under subsection (b)(2) shall use amounts in the revolving fund to provide loans to producers for use in designing and constructing agricultural projects.

(2) MAXIMUM AMOUNT OF LOAN.—The amount of a loan made to a producer using funds from a revolving fund shall not exceed $250,000, in the aggregate, for all agricultural projects serving an agricultural site of the producer.

(3) CONDITIONS ON LOANS.—A loan made to a producer using funds from a revolving fund shall—

(A) have an interest rate that is not more than the market interest rate, including an interest-free loan; and

(B) be repaid to the revolving fund not later than 20 years after the date on which funds are initially disbursed.

(d) REQUIREMENTS FOR PRODUCERS.—

(1) IN GENERAL.—A producer that seeks to receive a loan from a revolving fund shall—

(A) submit to the State within the jurisdiction of which the agricultural site of the producer is located an application that—

(i) contains such information as the State may require; and

(ii) demonstrates, to the satisfaction of the State, that each project proposed to be carried out with funds from the loan is an agricultural project; and

(B) agree to expend all funds from a loan in an expeditious and timely manner, as determined by the State.

(2) MAXIMUM PERCENTAGE OF AGRICULTURAL PROJECT COST.—Subject to subsection (c)(2), a pro-

ducer that receives a loan from a revolving fund may use funds from the loan to pay up to 100 percent of the cost of carrying out an agricultural project.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000.

SEC. 304. STATE REVOLVING FUND REVIEW PROCESS.

As soon as practicable after the date of enactment of this Act, the Administrator shall—

(1) consult with States, utilities, nonprofit organizations, and other Federal agencies providing financial assistance to identify ways to expedite and improve the application and review process, for the provision of assistance from—

(A) the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.); and

(B) the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12);

(2) in carrying out this section, the Administrator shall consider the needs of small treatment works (as defined by section 222 of the Federal

Water Pollution Control Act and small public water systems (as described in section 1433(d) of the Safe Drinking Water Act (42 U.S.C. 300i–2(d));

(3) take such administrative action as is necessary to expedite and improve the process as the Administrator has authority to take under existing law;

(4) collect information relating to innovative approaches taken by any State to simplify the application process of the State, and provide the information to each State; and

(5) submit to Congress a report that, based on the information identified under paragraph (1), contains recommendations for legislation to facilitate further streamlining and improvement of the process.

SEC. 305. COST OF SERVICE STUDY.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator shall enter an arrangement with the Academy under which the Academy shall complete and provide to the Administrator the results of a study of the means by which public water systems and treatment works selected by the Academy in accordance with subsection (c) meet the costs associated

with operations, maintenance, capital replacement, and regulatory requirements.

(b) REQUIRED ELEMENTS.—

(1) AFFORDABILITY.—The study shall, at a minimum—

(A) determine whether the rates at public water systems and treatment works for communities included in the study were established using a full-cost pricing model;

(B) if a full-cost pricing model was not used, identify any incentive rate systems that have been successful in significantly reducing—

(i) per capita water demand;

(ii) the volume of wastewater flows;

(iii) the volume of stormwater runoff; or

(iv) the quantity of pollution generated by stormwater;

(C) identify a set of best industry practices that public water systems and treatment works may use in establishing a rate structure that—

(i) adequately addresses the true cost of services provided to consumers by public water systems and treatment works, including infrastructure replacement;

(ii) encourages water conservation; and

(iii) takes into consideration the needs of disadvantaged individuals and communities, as identified by the Administrator;

(D) identify existing standards for affordability and the manner in which those standards are determined and defined;

(E) determine the manner in which affordability varies with respect to communities of different sizes and in different regions; and

(F) determine the extent to which affordability affects the decision of a community to increase public water system and treatment works rates (including the decision relating to the percentage by which those rates should be increased).

(2) DISADVANTAGED COMMUNITIES.—The study shall, at a minimum—

(A) survey a cross-section of States representing different sizes, demographies, and geographical regions;

(B) describe, for each State described in subparagraph (A), the definition of ''disadvantaged community'' used in the State in carrying

out projects and activities under the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) review other means of identifying the meaning of the term ''disadvantaged'', as that term applies to communities;

(D) determine which factors and characteristics are required for a community to be considered ''disadvantaged''; and

(E) evaluate the degree to which factors such as a reduction in the tax base over a period of time, a reduction in population, the loss of an industrial base, and the existence of areas of concentrated poverty are taken into account in determining whether a community is a disadvantaged community.

(c) SELECTION OF COMMUNITIES.—The Academy shall select communities, the public water system and treatment works rate structures of which are to be studied under this section, that include a cross-section of communities representing various populations, income levels, demographics, and geographical regions.

(d) USE OF RESULTS OF STUDY.—On receipt of the results of the study, the Administrator shall—

(1) submit the study to Congress;

(2) submit a report that describes the results of the study; and

(3) make the results available to treatment works and public water systems for use by the publicly owned treatment works and public water systems, on a voluntary basis, in determining whether 1 or more new approaches may be implemented at facilities of the publicly owned treatment works and public water systems.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2010 and 2014.

SEC. 306. EFFECTIVE UTILITY MANAGEMENT STRATEGIES.

(a) DEFINITIONS.—In this section:

(1) EFFECTIVE UTILITY MANAGEMENT STRATEGY.—The term ''effective utility management strategy'' means a strategy for the operation and management of a utility that, as determined by the Administrator, incorporates the following attributes:

(A) Product quality.

(B) Stakeholder understanding and support.

(C) Customer satisfaction.

(D) Employee development.

(E) Operational optimization.

(F) Financial viability.

(G) Infrastructure stability.

(H) Operational resiliency.

(I) Community sustainability.

(J) Water resource adequacy.

(2) UTILITY.—The term "utility" means—

(A) a treatment works (as defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292)); and

(B) a public water system (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f)).

(b) ACTION BY ADMINISTRATOR.—The Administrator may carry out training programs, provide technical assistance, and disseminate information regarding effective utility management strategies, including by—

(1) providing seminars and workshops (including electronic-based seminars and workshops), conferences, and other educational programs and developing curricula to advance effective utility management strategies;

(2) offering support and advice (including financial, operational, and management advice) to utility operators and managers regarding effective utility management strategies; and

(3) publishing and disseminating manuals on best management practices and other relevant information, success stories, and lessons learned relating to effective utility management strategies.

(c) PARTNER ORGANIZATIONS.—In carrying out subsection (b), the Administrator may enter into cooperative agreements, as the Administrator determines to be appropriate, with—

(1) stakeholder associations;

(2) qualified nonprofit organizations; and

(3) other relevant organizations, as determined by the Administrator.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2010 through 2014.

SEC. 307. WATERSENSE PROGRAM.

(a) ESTABLISHMENT.—There is established within the Environmental Protection Agency a program, to be known as the "WaterSense Program", to identify and promote voluntary approaches to increase water efficiency in the United States to reduce the strain on water and wastewater infrastructure and conserve water resources for future generations through voluntary labeling, promotion, or other forms of communication regarding water efficient products, programs, processes, buildings, landscapes, fa-

~~cilities, and services that meet the highest water conservation and performance standards.~~

~~(b) ADMINISTRATION.—The WaterSense Program shall be carried out by the Administrator.~~

~~(c) DUTIES.—In carrying out the WaterSense Program, the Administrator shall—~~

~~(1) establish—~~

~~(A) a WaterSense label to be used for certain items; and~~

~~(B) the procedure by which an item may be certified to display the WaterSense label;~~

~~(2) promote products displaying the WaterSense label as the preferred technologies in the market place for—~~

~~(A) reducing water use; and~~

~~(B) ensuring product performance;~~

~~(3) work to enhance public awareness of the WaterSense label;~~

~~(4) preserve the integrity of the WaterSense label by—~~

~~(A) developing specifications to ensure reliable performance of WaterSense-labeled products, buildings, landscapes, and services;~~

~~(B) overseeing WaterSense certifications made by third parties;~~

(C) conducting reviews of the use of the WaterSense label in the marketplace and taking corrective action in any case in which misuse of the label is identified; and

(D) carrying out such other measures as the Administrator determines to be appropriate;

(5) regularly research and update WaterSense product criteria for each applicable category of products;

(6) solicit comments from interested parties before establishing or revising a WaterSense product category, specification, or criterion (or before the effective date for any such product category, specification, or criterion, as applicable);

(7) on adoption of a new or revised product category, specification, or criterion, provide reasonable notice to interested parties regarding—

(A) any change (including a change of effective date) to the product category, specification, or criterion;

(B) an explanation of the change; and

(C) as appropriate, responses to comments submitted by interested parties regarding the product category, specification, or criterion;

(8) provide appropriate lead time, as determined by the Administrator, before the applicable effective date for a new or significant revision to a product category, specification, or criterion, taking into account the timing requirements of the manufacturing, product marketing, and distribution process for the specific product, programs, processes, buildings, landscapes, facilities, or services addressed; and

(9) identify and, where appropriate, implement other voluntary approaches in commercial, institutional, and industrial sectors to improve water efficiency.

(d) ANNUAL REPORTS.—Not less frequently than once each year, the Administrator shall prepare and make publicly available a report describing the activities carried out under this section, including, to the maximum extent practicable—

(1) available information regarding sales in each WaterSense product category; and

(2) the savings of water, energy, and capital costs of water, wastewater, and stormwater infrastructure attributable to the WaterSense program and each category of WaterSense product, expressed on a national, regional, State, and watershed level.

~~(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—~~

~~(1) $5,000,000 for each of fiscal years 2010 and 2011;~~

~~(2) $7,500,000 for each of fiscal years 2012 and 2013; and~~

~~(3) $10,000,000 for fiscal year 2014.~~

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Water Infrastructure Financing Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. DEFINITION OF ADMINISTRATOR.

In this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

TITLE I—WATER POLLUTION INFRASTRUCTURE

SEC. 101. TECHNICAL ASSISTANCE FOR RURAL SMALL TREATMENT WORKS AND MEDIUM TREATMENT WORKS.

(a) IN GENERAL.—Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) is amended by adding at the end the following:

"SEC. 222. TECHNICAL ASSISTANCE FOR RURAL SMALL TREATMENT WORKS AND MEDIUM TREATMENT WORKS.

"(a) DEFINITIONS.—In this section:

"(1) ADVANCED DECENTRALIZED WASTEWATER SYSTEM.—The term 'advanced decentralized wastewater system' means a decentralized wastewater sys-

tem that provides more effective treatment than a conventional septic system.

"(2) DECENTRALIZED WASTEWATER SYSTEM.—

"(A) IN GENERAL.—The term 'decentralized wastewater system' means a wastewater treatment system that is at or near a site at which wastewater is generated.

"(B) INCLUSIONS.—The term 'decentralized wastewater system' includes a system that provides for—

"(i) nonpotable reuse of treated effluent; or

"(ii) energy and nutrient recovery from wastewater constituents.

"(3) MEDIUM TREATMENT WORKS.—The term 'medium treatment works' means a publicly owned treatment works serving more than 10,000 but fewer than 100,000 individuals.

"(4) QUALIFIED NONPROFIT TECHNICAL ASSISTANCE PROVIDER.—The term 'qualified nonprofit technical assistance provider' means a qualified nonprofit technical assistance provider of water and wastewater services to small or medium-sized communities that provides technical assistance (including circuit rider, multi-State regional assistance programs, and train-

ing and preliminary engineering evaluations) to owners and operators of small treatment works or medium treatment works that may include State agencies.

"(5) SMALL TREATMENT WORKS.—The term 'small treatment works' means a publicly owned treatment works serving not more than 10,000 individuals.

"(b) GRANT PROGRAM.—

"(1) IN GENERAL.—The Administrator may make grants on a competitive basis to qualified nonprofit technical assistance providers that are qualified to provide assistance on a broad range of wastewater and stormwater approaches—

"(A) to assist owners and operators of small treatment works and medium treatment works to plan, develop, and obtain financing for eligible projects described in section 603(c) or 518(c);

"(B) to provide financial assistance, in consultation with the State in which the assistance is provided, to owners and operators of small treatment works and medium treatment works for predevelopment costs (including costs for planning, design, and associated preconstruction activities, such as activities relating directly to

the siting of the facility and related elements) associated with stormwater or wastewater infrastructure projects or short-term costs incurred for equipment replacement that is not part of regular operation and maintenance activities for existing stormwater or wastewater systems, if the amount of assistance for any single project does not exceed $50,000;

"(C) to provide technical assistance and training for owners and operators of small treatment works and medium treatment works to enable those treatment works and systems to protect water quality and achieve and maintain compliance with this Act; and

"(D) to disseminate information to owners and operators of small treatment works and medium treatment works, with respect to planning, design, construction, and operation of treatment works, small municipal separate storm sewer systems, decentralized wastewater treatment systems, and advanced decentralized wastewater treatment systems.

"(2) DISTRIBUTION OF GRANT.—In carrying out this subsection, the Administrator shall ensure, to the maximum extent practicable, that technical assistance

provided using funds from a grant under paragraph (1) is made available in each State.

"(3) CONSULTATION.—As a condition of receiving a grant under this subsection, a qualified nonprofit technical assistance provider shall agree to consult with each State in which grant funds are to be expended before the grant funds are expended in the State.

"(4) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, a qualified nonprofit technical assistance provider that receives a grant under this subsection shall submit to the Administrator a report that—

"(A) describes the activities of the qualified nonprofit technical assistance provider using grant funds received under this subsection for the fiscal year; and

"(B) specifies—

"(i) the number of communities served;

"(ii) the sizes of those communities; and

"(iii) the type of assistance provided by the qualified nonprofit technical assistance provider.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

"(1) for grants for small treatment works, $25,000,000 for each of fiscal years 2010 through 2014; and

"(2) for grants for medium treatment works, $15,000,000 for each of fiscal years 2010 through 2014.".

(b) GUIDANCE FOR SMALL SYSTEMS.—Section 602 of the Federal Water Pollution Control Act (33 U.S.C. 1382) is amended by adding at the end the following:

"(c) GUIDANCE FOR SMALL SYSTEMS.—

"(1) DEFINITION OF SMALL SYSTEM.—In this subsection, the term 'small system' means a system—

"(A) for which a municipality or intermunicipal, interstate, or State agency seeks assistance under this title; and

"(B) that serves a population of not more than 10,000 individuals.

"(2) SIMPLIFIED PROCEDURES.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall assist the States in establishing simplified procedures for small systems to obtain assistance under this title.

"(3) PUBLICATION OF MANUAL.—Not later than 1 year after the date of enactment of this subsection, after providing notice and opportunity for public comment, the Administrator shall publish—

"(A) a manual to assist small systems in obtaining assistance under this title; and

"(B) in the Federal Register, notice of the availability of the manual.".

SEC. 102. PRESERVATION OF EMPLOYEE LABOR STANDARDS.

Section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) is amended to read as follows:

"SEC. 513. PRESERVATION OF EMPLOYEE LABOR STANDARDS.

"(a) IN GENERAL.—Notwithstanding section 602(b)(6), the Administrator shall take such action as the Administrator determines to be necessary to ensure that each laborer and mechanic employed by a contractor or subcontractor of a construction project financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or any other form of financial assistance provided under this Act (including assistance provided by a State loan fund established under title VI) is paid wages at a rate of not less than the wages prevailing for the same type of work on similar construction in the immediate locality, as deter-

mined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

"(b) AUTHORITY OF SECRETARY OF LABOR.—With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions established in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.".

SEC. 103. PROJECTS ELIGIBLE FOR ASSISTANCE.

(a) IN GENERAL.—Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) is amended by striking subsection (c) and inserting the following:

"(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—

"(1) IN GENERAL.—Funds in each State water pollution control revolving fund shall be used only for providing financial assistance—

"(A) to a municipality or an intermunicipal, interstate, or State agency or a private treatment works or decentralized wastewater system that principally treats municipal wastewater or domestic sewage—

"(i) for construction of treatment works (as defined in section 212); or

"(ii) for capital costs associated with monitoring equipment for combined sanitary or sewer overflows;

"(B) to implement measures to control, manage, reduce, treat, infiltrate, or reuse stormwater, the primary purpose of which is the preservation, protection, or enhancement of water quality to support public purposes (including the procurement and use of equipment to support minimum measures, such as street sweeping and storm drain system cleaning, or acquisition of other land and interests in land that are necessary for those activities and measures);

"(C) to implement a management program established under section 319;

"(D) to develop and implement a conservation and management plan under section 320;

"(E) for projects to increase the security of wastewater treatment works (as defined in section 212), excluding any expenditure for operations or maintenance;

"(F) to carry out water conservation or efficiency projects that result in direct water quality benefits;

"(G) to implement measures to integrate water resource management planning and implementation;

"(H) to carry out water reuse (including wastewater reuse), reclamation, and recycling projects that result in direct water quality benefits;

"(I) for projects to increase the energy efficiency of treatment works (as defined in section 212) that result in direct water quality benefits;

"(J) for the development and implementation of utility management improvement plans consistent with an effective utility management strategy (as defined in section 306(a) of the Water Infrastructure Financing Act); and

"(K) for the development and implementation of integrative watershed improvement plans that include cost-effective solutions that consider point and nonpoint sources of pollution and traditional and cost-saving water treatment and efficiency projects.

"(2) LIMITATION.—Not more than 5 percent of the amount of a capitalization grant of a State may be used during a fiscal year to provide assistance for

activities described in subparagraph (J) or (K) of paragraph (1).

"(3) STATE WATER POLLUTION CONTROL REVOLVING FUNDS.—

"(A) IN GENERAL.—A State water pollution control revolving fund shall be established, maintained, and credited with repayments.

"(B) BALANCE OF FUND.—The balance of each fund described in subparagraph (A) shall be available in perpetuity for providing financial assistance under this section.".

(b) MODIFICATION OF DEFINITION.—Section 212(2)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1292(2)(A)) is amended—

(1) by striking "and any works, including site";

(2) by striking "is used for ultimate" and inserting "will be used for ultimate"; and

(3) by inserting "; and acquisition of other land and interests in land necessary for construction" before the period at the end.

SEC. 104. AFFORDABILITY.

(a) IN GENERAL.—Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) is amended—

(1) by redesignating subsections (e) through (h) as subsections (g) through (j), respectively;

(2) in subsection (d)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "20 years" and inserting "the lesser of 30 years or the design life of the project to be financed with the proceeds of the loan"; and

(ii) in subparagraph (B), by striking "not later than 20 years after project completion" and inserting "upon the expiration of the term of the loan";

(B) in paragraph (6), by striking "and" at the end; and

(C) in paragraph (7), by striking "title, except that" and all that follows and inserting the following:

"title, except that—

"(A) such amounts shall not exceed an amount equal to the sum of, for each fiscal year—

"(i) an amount equal to the greatest of—

"(I) $400,000;

"(II) 1/5 percent of the current valuation of the fund; or

"(III) 6 percent of all grant awards to the fund under this title for a fiscal year; and

"(ii) the amount of any fees collected by the State for that purpose, regardless of the source; and

"(B) as a source of revenue (restricted solely to interest earnings of the fund) or security for payment of the principal and interest on revenue or general obligation bonds issued by the State to provide matching funds under section 602(b)(2), if the proceeds of the sale of the bonds will be deposited in the fund."; and

(3) by inserting after subsection (d) the following:

"(e) ADDITIONAL ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

"(1) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term 'disadvantaged community' means a community with a service area, or portion of a service area, of a treatment works that meets affordability criteria established after public review and comment by the State in which the treatment works is located.

"(2) LOAN SUBSIDY.—Notwithstanding any other provision of this section, subject to paragraph (5), in a case in which the State makes a loan from the water pollution control revolving loan fund in accordance with subsection (c) to a disadvantaged community or a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization, including—

"(A) the forgiveness of all or a portion of the principal of the loan; and

"(B) a negative interest rate on the loan.

"(3) TOTAL AMOUNT OF SUBSIDIES.—For each fiscal year, the total amount of loan subsidies made by the State pursuant to this subsection may not exceed 30 percent of the amount of the capitalization grant received by the State for the fiscal year.

"(4) INFORMATION.—The Administrator may publish information to assist States in establishing affordability criteria described in paragraph (1).

"(f) COST-SAVING WATER TREATMENT AND EFFICIENCY IMPROVEMENTS.—

"(1) IN GENERAL.—Subject to subsection (e)(3), in providing a loan for a project under this section, a State may forgive repayment of a portion of the

loan amount up to the percentage of the project that is devoted to alternative approaches to wastewater and stormwater controls (including nonstructural methods), such as projects that treat or minimize sewage or urban stormwater discharges using—

"(A) decentralized or distributed stormwater controls;

"(B) advanced decentralized wastewater treatment;

"(C) low-impact development technologies and nonstructural approaches;

"(D) stream buffers;

"(E) wetland restoration and enhancement;

"(F) actions to minimize the quantity of and direct connections to impervious surfaces;

"(G) soil and vegetation, or other permeable materials;

"(H) actions that increase efficient water use, water conservation, or water reuse, including the rehabilitation or replacement of existing leaking pipes; or

"(I) actions that increase energy efficiency or reduce energy consumption at a treatment works.

"(2) TREATMENT OF LOAN FORGIVENESS.—The amount of loan forgiveness provided by a State under this subsection shall be—

"(A) credited to each State; and

"(B) deducted from the total amount of State capitalization grants for which matching funds are required from the State under section 602(b)(2).".

(b) CONFORMING AMENDMENT.—Section 221(d) of the Federal Water Pollution Control Act (33 U.S.C. 1301(d)) is amended in the second sentence by striking "603(h)" and inserting "603(j)".

SEC. 105. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) is amended by striking subsection (i) (as redesignated by section 103(a)(1)) and inserting the following:

"(i) PRIORITY SYSTEM REQUIREMENT.—

"(1) DEFINITIONS.—In this subsection:

"(A) RESTRUCTURING.—The term 'restructuring' means—

"(i) the consolidation of management functions or ownership with another facility; or

"(ii) the formation of cooperative partnerships.

"(B) TRADITIONAL WASTEWATER APPROACH.—The term 'traditional wastewater approach' means a managed system used to collect and treat wastewater from an entire service area consisting of—

"(i) collection sewers;

"(ii) a centralized treatment plant using biological, physical, or chemical treatment processes; and

"(iii) a direct point source discharge to surface water.

"(2) PRIORITY SYSTEM.—In providing financial assistance from the water pollution control revolving fund of the State, the State shall establish a priority system that—

"(A) takes into consideration appropriate chemical, physical, and biological data relating to water quality that the State considers reasonably available and of sufficient quality;

"(B) ensures that projects undertaken with assistance under this title are designed to achieve, as determined by the State, the optimum water quality management, consistent with the

public health and water quality goals and requirements of this Act;

"(C) provides for public notice and opportunity to comment on the establishment of the priority system and the summary under subparagraph (D); and

"(D) provides for the publication, not less than biennially in summary form, of a description of projects in the State that are eligible for assistance under this title that indicates—

"(i) the priority assigned to each project under the priority system of the State; and

"(ii) the funding schedule for each project, to the extent the information is available.

"(3) WEIGHT GIVEN TO APPLICATIONS.—After determining project priorities under subparagraph (2), the State shall give greater weight to an application for assistance if the application includes such information as the State determines to be necessary and contains—

"(A) a description of utility management best practices undertaken by a treatment works applying for assistance, including—

"(i) an inventory of assets, including a description of the condition of those assets;

"(ii) a schedule for replacement of the assets;

"(iii) a financing plan that factors in all lifecycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs; and

"(iv) a review of options for restructuring the treatment works;

"(B) approaches other than a traditional wastewater approach that treat or minimize sewage or urban stormwater discharges using—

"(i) decentralized or distributed stormwater controls;

"(ii) advanced decentralized wastewater treatment;

"(iii) low-impact development technologies and nonstructural approaches;

"(iv) stream buffers;

"(v) wetland restoration and enhancement;

"(vi) actions to minimize the quantity of and direct connections to impervious surfaces;

"(vii) soil and vegetation, or other permeable materials;

"(viii) actions that increase efficient water use, water conservation, or water reuse; or

"(ix) actions that increase energy efficiency or reduce energy consumption at a treatment works;

"(C) a demonstration of consistency with State, regional, and municipal watershed plans, water conservation and efficiency plans, or integrated water resource management plans;

"(D) a proposal by the applicant demonstrating flexibility through alternative means to carry out responsibilities under Federal regulations, that may include watershed permitting and other innovative management approaches, while achieving results that—

"(i) the State, in the case of a permit program approved under section 402, determines will meet permit requirements; or

"(ii) the Administrator determines are measurably superior, as compared to regulatory standards; or

"(E) projects that address adverse environmental conditions.".

SEC. 106. TRANSFERABILITY OF FUNDS.

Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) (as amended by section 104(a)(1)) is amended by adding at the end the following:

"(k) TRANSFER OF FUNDS.—

"(1) IN GENERAL.—The Governor of a State may—

"(A)(i) reserve not more than the greater of—

"(I) 33 percent of a capitalization grant made under this title; or

"(II) 33 percent of a capitalization grant made under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); and

"(ii) add the reserved funds to any funds provided to the State under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); and

"(B)(i) reserve for any year an amount that does not exceed the amount that may be reserved under subparagraph (A) for that year from capitalization grants made under section 1452 of that Act (42 U.S.C. 300j–12); and

"(ii) add the reserved funds to any funds provided to the State under this title.

"(2) STATE MATCH.—Funds reserved under this subsection shall not be considered to be a State contribution for a capitalization grant required under this title or section 1452(b) of the Safe Drinking Water Act (42 U.S.C. 300j–12(b)).".

SEC. 107. NONCOMPLIANCE.

Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) (as amended by section 106) is amended by adding at the end the following:

"(l) NONCOMPLIANCE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no assistance (other than assistance that is to be used by a treatment works solely for planning, design, or security purposes) shall be provided under this title to the owner or operator of a treatment works that has been in significant noncompliance with any requirement of this Act for any of the 4 quarters during the preceding 8 quarters, unless the

treatment works is in compliance with an enforceable administrative order to effect compliance with the requirement.

"(2) EXCEPTION.—An owner or operator of a treatment works that is determined under paragraph (1) to be in significant noncompliance with a requirement described in that paragraph may receive assistance under this title if the Administrator and the State providing the assistance determine that—

"(A) the entity conducting the enforcement action on which the determination of significant noncompliance is based has determined that the use of assistance would enable the owner or operator of the treatment works to take corrective action toward resolving the violations; or

"(B) the entity conducting the enforcement action on which the determination of significant noncompliance is based has determined that the assistance would be used by the owner or operator of the treatment works in order to assist owners and operators in making progress towards compliance.".

SEC. 108. NEGOTIATION OF CONTRACTS.

Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) (as amended by section 107) is amended by adding at the end the following:

"(m) NEGOTIATION OF CONTRACTS.—For communities with populations of more than 10,000 individuals, a contract to be carried out using funds directly made available by a capitalization grant under this section for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—

"(1) a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or

"(2) an equivalent State qualifications-based requirement (as determined by the Governor of the State).".

SEC. 109. ALLOTMENT OF FUNDS.

Section 604 of the Federal Water Pollution Control Act (33 U.S.C. 1384) is amended by striking subsections (a) and (b) and inserting the following:

"(a) IN GENERAL.—Subject to subsection (b)(2), amounts authorized to be appropriated to carry out this section for each of fiscal years 2010 through 2014 shall be

allotted among States by the Administrator in accordance with the allotment values specified in the following table:

"State	*Allotment value*
Alabama	*0.012860*
Alaska	*0.007500*
Arizona	*0.010247*
Arkansas	*0.007500*
California	*0.079629*
Colorado	*0.010164*
Connecticut	*0.014150*
Delaware	*0.007500*
District of Columbia	*0.005000*
Florida	*0.044139*
Georgia	*0.012825*
Hawaii	*0.008048*
Idaho	*0.007500*
Illinois	*0.048540*
Indiana	*0.024633*
Iowa	*0.010266*
Kansas	*0.009129*
Kentucky	*0.012025*
Louisiana	*0.013465*
Maine	*0.007829*
Maryland	*0.025129*
Massachusetts	*0.025754*
Michigan	*0.033487*
Minnesota	*0.020385*
Mississippi	*0.009112*
Missouri	*0.028037*
Montana	*0.007500*
Nebraska	*0.008023*
Nevada	*0.007500*
New Hampshire	*0.007500*
New Jersey	*0.046117*
New Mexico	*0.007500*
New York	*0.103531*
North Carolina	*0.019007*
North Dakota	*0.007500*
Ohio	*0.054722*
Oklahoma	*0.008171*
Oregon	*0.012456*
Pennsylvania	*0.041484*
Rhode Island	*0.007500*
South Carolina	*0.007500*
South Dakota	*0.007500*
Tennessee	*0.011019*
Texas	*0.037664*
Utah	*0.007500*
Vermont	*0.007500*
Virginia	*0.020698*
Washington	*0.017588*

"State	*Allotment value*
West Virginia	*0.011825*
Wisconsin	*0.022844*
Wyoming	*0.007500*
Puerto Rico	*0.005000*
Territories	*0.002500*

"(b) RESERVATION OF FUNDS.—

"(1) PLANNING.—Each State may reserve for each fiscal year to carry out planning under sections 205(j) and 303(e) an amount equal to the greater of—

"(A) 2 percent of the sums allotted to the State under this section for the fiscal year; or

"(B) $100,000.

"(2) OPERATOR TRAINING; INDIAN TRIBES.—Of the total amount of funds made available to carry out this title, before allotting funds in accordance with subsection (a), for fiscal year 2009 and each fiscal year thereafter, the Administrator—

"(A) may reserve not more than $5,000,000 to carry out the objectives described in section 104(g); and

"(B) shall allocate 1.5 percent to Indian tribes (as defined in section 518(h)).".

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

The Federal Water Pollution Control Act is amended by striking section 607 (33 U.S.C. 1387) and inserting the following:

"SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

"(1) $3,200,000,000 for each of fiscal years 2010 and 2011;

"(2) $3,600,000,000 for fiscal year 2012;

"(3) $4,000,000,000 for fiscal year 2013; and

"(4) $6,000,000,000 for fiscal year 2014.

"(b) AVAILABILITY.—Amounts made available under this section shall remain available until expended.

"(c) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under subsection (a) to carry out this title for a fiscal year, the Administrator may reserve not more than $1,000,000 for the fiscal year, to remain available until expended, to pay the costs of conducting needs surveys under section 516(b)(1)(B).".

SEC. 111. SEWER OVERFLOW CONTROL GRANTS.

(a) SEWER OVERFLOW CONTROL GRANTS.—Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) in subsection (a), by striking "IN GENERAL" and all that follows through "(2) subject to subsection (g), the Administrator may" and inserting the following:

"(a) IN GENERAL.—The Administrator may—

"(1) make grants to States for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows; and

"(2) subject to subsection (g),"; and

(2) by striking subsections (e) through (g) and inserting the following:

"(e) ADMINISTRATIVE REQUIREMENTS.—

"(1) IN GENERAL.—Subject to paragraph (2), a project that receives grant assistance under subsection (a) shall be carried out subject to the same requirements as a project that receives assistance from a State water pollution control revolving fund established pursuant to title VI.

"(2) DETERMINATION OF GOVERNOR.—The requirement described in paragraph (1) shall not apply to a project that receives grant assistance under subsection (a) to the extent that the Governor of the State in which the project is located determines that a requirement described in title VI is inconsistent with the purposes of this section.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, to remain available until expended—

"(1) $250,000,000 for fiscal year 2010;

"(2) $300,000,000 for fiscal year 2011;

"(3) $350,000,000 for fiscal year 2012;

"(4) $400,000,000 for fiscal year 2013; and

"(5) $500,000,000 for fiscal year 2014.

"(g) ALLOCATION OF FUNDS.—

"(1) FISCAL YEAR 2010 AND 2011.—For each of fiscal years 2010 and 2011, subject to subsection (h), the Administrator shall use the amounts made available to carry out this section to provide grants to municipalities and municipal entities under subsection (a)(2)—

"(A) in accordance with the priority criteria described in subsection (b); and

"(B) with additional priority given to proposed projects that involve the use of—

"(i) nonstructural, low-impact development;

"(ii) water conservation, efficiency, or reuse; or

"(iii) other decentralized stormwater or wastewater approaches to minimize flows into the sewer systems.

"(2) FISCAL YEAR 2012 AND THEREAFTER.—For fiscal year 2012 and each fiscal year thereafter, subject to subsection (h), the Administrator shall use the amounts made available to carry out this section to provide grants to States under subsection (a)(1) in accordance with a formula that—

"(A) shall be established by the Administrator, after providing notice and an opportunity for public comment; and

"(B) allocates to each State a proportional share of the amounts based on the total needs of the State for municipal combined sewer overflow controls and sanitary sewer overflow controls, as identified in the most recent survey—

"(i) conducted under section 210; and

"(ii) included in a report required under section 516(b)(1)(B).".

(b) REPORTS.—Section 221(i) of the Federal Water Pollution Control Act (33 U.S.C. 1301(i)) is amended in the first sentence by striking "2003" and inserting "2011".

SEC. 112. CRITICAL WATER INFRASTRUCTURE PROJECTS.

(a) ESTABLISHMENT.—The Administrator shall establish a program under which grants are provided to eligible entities for use in carrying out projects and activities the primary purpose of which is watershed restoration through the protection or improvement of water quality.

(b) PROJECT SELECTION.—

(1) IN GENERAL.—The Administrator may provide funds under this section to an eligible entity to carry out an eligible project described in paragraph (3).

(2) EQUITABLE DISTRIBUTION.—The Administrator shall ensure an equitable distribution of projects under this section, taking into account cost and number of requests for each category listed in paragraph (3).

(3) ELIGIBLE PROJECTS.—A project that is eligible to be carried out using funds provided under this section may include projects that are included in the intended use plan of the State developed in accordance with section 606(c) of the Federal Water Pollution Control Act (33 U.S.C. 1386(c)).

(c) LOCAL PARTICIPATION.—In prioritizing projects for implementation under this section, the Administrator shall consult with, and consider the priorities of—

(1) affected State and local governments; and

(2) public and private entities that are active in watershed planning and restoration.

(d) COST SHARING.—Before carrying out any project under this section, the Administrator shall enter into an agreement with 1 or more non-Federal interests that shall require the non-Federal interests—

(1) to pay 45 percent of the total costs of the project, which may include services, materials, supplies, or other in-kind contributions;

(2) to provide any land, easements, rights-of-way, and relocations necessary to carry out the project; and

(3) to pay 100 percent of any operation, maintenance, repair, replacement, and rehabilitation costs associated with the project.

(e) WAIVER.—The Administrator may waive the requirement to pay the non-Federal share of the cost of carrying out an eligible activity using funds from a grant provided under this section if the Administrator determines that an eligible entity is unable to pay, or would experience significant financial hardship if required to pay, the non-Federal share.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000 for each of fiscal years 2010 through 2014.

TITLE II—SAFE DRINKING WATER INFRASTRUCTURE

SEC. 201. DRINKING WATER TECHNICAL ASSISTANCE FOR COMMUNITIES.

Section 1442(e) of the Safe Drinking Water Act (42 U.S.C. 300j–1(e)) is amended—

(1) in the first sentence, by striking "The Administrator may provide" and inserting the following:

"(1) PUBLIC WATER SYSTEMS.—The Administrator may provide";

(2) in the second sentence, by striking "Such assistance" and inserting the following:

"(2) TYPES OF ASSISTANCE.—Such assistance";

(3) in the third sentence, by striking "The Administrator shall ensure" and inserting the following:

"(3) AVAILABILITY.—The Administrator shall ensure";

(4) in the fourth sentence, by striking "Each nonprofit" and inserting the following:

"(4) REQUIREMENT APPLICABLE TO NONPROFIT ORGANIZATIONS.—Each nonprofit"; and

(5) by striking the fifth sentence and all that follows and inserting the following:

"(5) PRIORITY.—In providing grants under this section, the Administrator shall give priority to small systems organizations that, as determined by the Administrator, in consultation with the State, are qualified and will be the most effective at assisting small systems.

"(6) WELLS AND WELL SYSTEMS.—

"(A) IN GENERAL.—The Administrator shall provide grants to nonprofit organizations to provide technical assistance to communities and individuals regarding the design, operation, construction, and maintenance of household wells and small shared well-systems that provide drinking water.

"(B) FORM OF ASSISTANCE.—Technical assistance referred to in subparagraph (A) may include—

"(i) training and education;

"(ii) operation of a hotline; and

"(iii) the conduct of other activities relating to the design and construction of household, shared, and small water well systems in rural areas.

"(C) PRIORITY.—Subject to paragraph (5), in providing grants under this section, the Ad-

ministrator shall give priority to applicants that, as determined by the Administrator—

"(i) are qualified; and

"(ii) have demonstrated experience in providing similar technical assistance and in developing similar projects.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph—

"(i) $7,000,000 for fiscal year 2010; and

"(ii) $7,500,000 for each of fiscal years 2011 through 2014.

"(7) FUNDING.—

"(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this subsection (other than paragraph (6)) $35,000,000 for each of fiscal years 2010 through 2014.

"(B) LOBBYING EXPENSES.—No portion of any State loan fund established under section 1452 and no portion of any funds made available under this subsection may be used for lobbying expenses.

"(C) INDIAN TRIBES.—Of the total amount made available under this section for each fiscal year, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.".

SEC. 202. PRESERVATION OF EMPLOYEE LABOR STANDARDS.

Section 1450 of the Safe Drinking Water Act (42 U.S.C. 300j–9) is amended by striking subsection (e) and inserting the following:

"(e) LABOR STANDARDS.—

"(1) IN GENERAL.—The Administrator shall take such action as the Administrator determines to be necessary to ensure that each laborer and mechanic employed by a contractor or subcontractor of a construction project financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or any other form of financial assistance provided under this Act (including assistance provided by a State loan fund established under section 1452) is paid wages at a rate of not less than the wages prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

"(2) AUTHORITY OF SECRETARY OF LABOR.—With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions established in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.".

SEC. 203. PRECONSTRUCTION WORK.

Section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)) is amended—

(1) by designating the first, second, third, fourth, and fifth sentences as subparagraphs (A), (B), (D), (E), and (F), respectively;

(2) in subparagraph (B) (as designated by paragraph (1))—

(A) by striking "(not" and inserting "(including expenditures for planning, design, and associated preconstruction activities, including activities relating to the siting of the facility, but not"; and

(B) by inserting before the period at the end the following: "or to replace or rehabilitate aging treatment, storage, or distribution facilities of public water systems or provide for capital projects (excluding any expenditure for oper-

ations and maintenance) to upgrade the security of public water systems"; and

(3) by inserting after subparagraph (B) (as designated by paragraph (1)) the following:

"(C) SALE OF BONDS.—Funds may also be used by a public water system as a source of revenue (restricted solely to interest earnings of the applicable State loan fund) or security for payment of the principal and interest on revenue or general obligation bonds issued by the State to provide matching funds under subsection (e), if the proceeds of the sale of the bonds will be deposited in the State loan fund.".

SEC. 204. PRIORITY SYSTEM REQUIREMENTS.

Section 1452(b)(3) of the Safe Drinking Water Act (42 U.S.C. 300j–12(b)(3)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D);

(2) by striking subparagraph (A) and inserting the following:

"(A) DEFINITION OF RESTRUCTURING.—In this paragraph, the term 'restructuring' means changes in operations (including ownership, cooperative partnerships, asset management, consolidation, and alternative water supply).

"(B) PRIORITY SYSTEM.—An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

"(i) address the most serious risk to human health;

"(ii) are necessary to ensure compliance with this title (including requirements for filtration);

"(iii) assist systems most in need on a per-household basis according to State affordability criteria; and

"(iv) improve the sustainability of systems.

"(C) WEIGHT GIVEN TO APPLICATIONS.—After determining project priorities under subparagraph (B), an intended use plan shall provide that the State shall give greater weight to an application for assistance by a community water system if the application includes such information as the State determines to be necessary and contains—

"(i) a description of utility management best practices undertaken by a treat-

ment works applying for assistance, including—

"(I) an inventory of assets, including a description of the condition of the assets;

"(II) a schedule for replacement of assets;

"(III) a financing plan that factors in all lifecycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs; and

"(IV) a review of options for restructuring the public water system;

"(ii) demonstration of consistency with State, regional, and municipal watershed plans;

"(iii) a water conservation plan consistent with guidelines developed for those plans by the Administrator under section 1455(a); and

"(iv) approaches to improve the sustainability of the system, including—

"(I) water efficiency or conservation, including the rehabilitation or replacement of existing leaking pipes;

"(II) use of reclaimed water;

"(III) actions to increase energy efficiency; and

"(IV) implementation of source water protection plans."; and

(3) in subparagraph (D) (as redesignated by paragraph (1)), by striking "periodically" and inserting "at least biennially".

SEC. 205. AFFORDABILITY.

Section 1452(d)(3) of the Safe Drinking Water Act (42 U.S.C. 300j–12(d)(3)) is amended in the first sentence by inserting ", or portion of a service area," after "service area".

SEC. 206. SAFE DRINKING WATER REVOLVING LOAN FUNDS.

Section 1452(g) of the Safe Drinking Water Act (42 U.S.C. 300j–12(g)) is amended—

(1) paragraph (2)—

(A) in the first sentence, by striking "up to 4 percent of the funds allotted to the State under this section" and inserting ", for each fiscal year, an amount that does not exceed the sum of the amount of any fees collected by the State for

use in covering reasonable costs of administration of programs under this section, regardless of the source, and an amount equal to the greatest of $400,000, 1/5 percent of the current valuation of the fund, or 6 percent of all grant awards to the fund under this section for the fiscal year,"; and

(B) by striking "1419," and all that follows through "1993." and inserting "1419."; and

(2) by adding at the end the following:

"(5) TRANSFER OF FUNDS.—

"(A) IN GENERAL.—The Governor of a State may—

"(i)(I) reserve not more than the greater of—

"(aa) 33 percent of a capitalization grant made under this section; or

"(bb) 33 percent of a capitalization grant made under section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381);

"(II) add the funds reserved to any funds provided to the State under section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and

"(ii)(I) reserve for any fiscal year an amount that does not exceed the amount that may be reserved under clause (i)(I) for that year from capitalization grants made under section 601 of that Act (33 U.S.C. 1381); and

"(II) add the reserved funds to any funds provided to the State under this section.

"(B) STATE MATCH.—Funds reserved under this paragraph shall not be considered to be a State match of a capitalization grant required under this section or section 602(b) of the Federal Water Pollution Control Act (33 U.S.C. 1382(b)).".

SEC. 207. OTHER AUTHORIZED ACTIVITIES.

Section 1452(k)(2)(D) of the Safe Drinking Water Act (42 U.S.C. 300j–12(k)(2)(D)) is amended by inserting before the period at the end the following: "(including implementation of source water protection plans)".

SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

Section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) is amended by striking subsection (m) and inserting the following:

"(m) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

"(A) $1,500,000,000 for fiscal year 2010;

"(B) $2,000,000,000 for each of fiscal years 2011 and 2012;

"(C) $3,200,000,000 for fiscal year 2013; and

"(D) $6,000,000,000 for fiscal year 2014.

"(2) AVAILABILITY.—Amounts made available under this subsection shall remain available until expended.

"(3) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under paragraph (1) to carry out this section for a fiscal year, the Administrator may reserve not more than $1,000,000 per year to pay the costs of conducting needs surveys under subsection (h).".

SEC. 209. NEGOTIATION OF CONTRACTS.

Section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) is amended by adding at the end the following:

"(s) NEGOTIATION OF CONTRACTS.—For communities with populations of more than 10,000 individuals, a contract to be carried out using funds directly made available by a capitalization grant under this section for program

management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—

"(1) a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or

"(2) an equivalent State qualifications-based requirement (as determined by the Governor of the State).".

SEC. 210. CRITICAL DRINKING WATER INFRASTRUCTURE PROJECTS.

(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall establish a program under which grants are provided to eligible entities for use in carrying out projects and activities the primary purpose of which is to assist community water systems in meeting the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(b) PROJECT SELECTION.—A project that is eligible to be carried out using funds provided under this section may include projects that—

(1) develop alternative water sources;

(2) provide assistance to small systems; or

(3) assist a community water system—

(A) to comply with a national primary drinking water regulation; or

(B) to mitigate groundwater contamination, including saltwater intrusion.

(c) ELIGIBLE ENTITIES.—An entity eligible to receive a grant under this section is—

(1) a community water system as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f); or

(2) a system that is located in an area governed by an Indian Tribe (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f));

(d) PRIORITY.—In prioritizing projects for implementation under this section, the Administrator shall give priority to community water systems that—

(1) serve a community that, under affordability criteria established by the State under section 1452(d)(3) of the Safe Drinking Water Act (42 U.S.C. 300j–12), is determined by the State to be—

(A) a disadvantaged community; or

(B) a community that may become a disadvantaged community as a result of carrying out an eligible activity; or

(2) serve a community with a population of less than 10,000 individuals.

(e) LOCAL PARTICIPATION.—In prioritizing projects for implementation under this section, the Administrator shall consult with, and consider the priorities of, affected States, Indian Tribes, and local governments.

(f) COST SHARING.—Before carrying out any project under this section, the Administrator shall enter into a binding agreement with 1 or more non-Federal interests that shall require the non-Federal interests—

(1) to pay 45 percent of the total costs of the project, which may include services, materials, supplies, or other in-kind contributions;

(2) to provide any land, easements, rights-of-way, and relocations necessary to carry out the project; and

(3) to pay 100 percent of any operation, maintenance, repair, replacement, and rehabilitation costs associated with the project.

(g) WAIVER.—The Administrator may waive the requirement to pay the non-Federal share of the cost of carrying out an eligible activity using funds from a grant provided under this section if the Administrator determines that an eligible entity is unable to pay, or would experience significant financial hardship if required to pay, the non-Federal share.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $230,000,000 for fiscal year 2010; and

(2) $300,000,000 for each of fiscal years 2011 through 2014.

SEC. 211. REDUCING LEAD IN DRINKING WATER.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term "eligible entity" means—

(A) a community water system (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f));

(B) a system located in an area governed by an Indian Tribe (as defined in that section);

(C) a nontransient noncommunity water system;

(D) a qualified nonprofit organization, as determined by the Administrator; and

(E) a municipality or State, interstate, or intermunicipal agency.

(2) LEAD REDUCTION PROJECT.—The term "lead reduction project" means a project or activity the primary purpose of which is to reduce the level of lead in water for human consumption by—

(A) replacement of publicly owned lead service lines;

(B) capital costs, testing, planning, or other relevant activities, as determined by the Administrator, to identify and address conditions (including corrosion control) that contribute to increased lead levels in water for human consumption;

(C) assistance to low-income homeowners to replace privately owned service lines, pipes, fittings, or fixtures that contain lead; and

(D) education of consumers regarding measures to reduce exposure to lead from drinking water or other sources.

(3) LOW-INCOME.—The term "low-income", with respect to an individual provided assistance under this section, has such meaning as may be given the term by the head of the municipality or State, interstate, or intermunicipal agency with jurisdiction over the area to which assistance is provided.

(4) MUNICIPALITY.—The term "municipality" means—

(A) a city, town, borough, county, parish, district, association, or other public entity estab-

lished by, or pursuant to, applicable State law; and

(B) an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)).

(b) GRANT PROGRAM.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall establish a grant program to provide assistance to eligible entities for lead reduction projects in the United States.

(2) EVALUATION.—In providing assistance under this section, the Administrator shall evaluate—

(A) whether an eligible entity applying for assistance has taken steps to identify the source of lead in water for human consumption; and

(B) the means by which the proposed lead reduction project would reduce lead levels in the applicable water system.

(3) PRIORITY APPLICATION.—In providing grants under this subsection, the Administrator shall give priority to an eligible entity that—

(A) carries out a lead reduction project at a public water system or nontransient noncommunity water system that has exceeded the

lead action level established by the Administrator at any time during the 3-year period preceding the date of submission of the application of the eligible entity;

(B) addresses lead levels in water for human consumption at a school, daycare, or other facility that primarily serves children or another vulnerable human subpopulation; or

(C) addresses such priority criteria as the Administrator may establish, consistent with the goal of reducing lead levels of concern.

(4) COST SHARING.—

(A) IN GENERAL.—Subject to subparagraph (B), the non-Federal share of the total cost of a project funded by a grant under this subsection shall be not less than 20 percent.

(B) WAIVER.—The Administrator may reduce or eliminate the non-Federal share under subparagraph (A) for reasons of affordability, as the Administrator determines to be appropriate.

(5) LOW-INCOME ASSISTANCE.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), an eligible entity may use a grant provided under this subsection to provide

assistance to low-income homeowners to carry out lead reduction projects.

(B) LOW-INCOME ASSISTANCE CAP.—Of the funds made available to carry out this section, not more than $5,000,000 may be allocated to provide assistance to low-income homeowners under this paragraph for any fiscal year.

(C) LIMITATION.—The amount of a grant provided to a low-income homeowner under this paragraph shall not exceed $5,000.

(6) SPECIAL CONSIDERATION FOR LEAD SERVICE LINE REPLACEMENT.—In carrying out lead service line replacement using a grant under this subsection, an eligible entity shall—

(A) notify customers of the replacement of any publicly owned portion of the lead service line;

(B) offer to replace the privately owned portion of the lead service line at the cost of replacement;

(C) recommend measures to avoid exposure to short-term increases in lead levels following a partial lead service line replacement; and

(D) demonstrate that the eligible entity has considered multiple options for reducing lead in

drinking water, including an evaluation of options for corrosion control.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $60,000,000 for each of fiscal years 2010 through 2014.

TITLE III—MISCELLANEOUS

SEC. 301. DEFINITION OF ACADEMY.

In this title, the term "Academy" means the National Academy of Sciences.

SEC. 302. PROGRAM FOR WATER QUALITY ENHANCEMENT AND MANAGEMENT.

(a) INNOVATIVE TECHNOLOGY AND ALTERNATIVE APPROACHES GRANT PROGRAM.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator shall establish a program to provide grants to, and enter into contracts and cooperative agreements with, research institutions, institutions of higher education, National Laboratories, and other appropriate entities (including consortia of such institutions and entities), through a competitive process, in accordance with the plan developed under subsection (b), for research regarding, and development of the use of, innovative and alternative technologies to improve water quality,

drinking water supply, or water use efficiency and conservation.

(2) TYPES OF PROJECTS.—In carrying out this subsection, the Administrator may select projects relating to such matters as innovative or alternative technologies, approaches, practices, or methods—

(A) to increase the effectiveness and efficiency of water and wastewater infrastructure through the use of integrated water resource management;

(B) to increase the effectiveness and efficiency of public water systems, including—

(i) source water protection;

(ii) water use reduction;

(iii) water collection, storage, and treatment and reuse of rainwater, stormwater, and graywater;

(iv) identification of behavioral, social, and economic barriers to achieving greater water use efficiency;

(v) use of watershed planning directed toward water quality, conservation, and supply;

(vi) actions to reduce energy consumption;

(vii) water treatment;

(viii) water distribution and wastewater collection systems;

(ix) desalination; and

(x) water security;

(C) to encourage the use of innovative or alternative technologies or approaches relating to water supply or availability;

(D) to increase the effectiveness and efficiency of new and existing treatment works, including—

(i) methods of collecting, treating, dispersing, reusing, reclaiming, and recycling wastewater;

(ii) system design;

(iii) nonstructural alternatives;

(iv) decentralized approaches;

(v) stormwater and wastewater reuse;

(vi) water use efficiency and conservation;

(vii) actions to reduce energy consumption;

(viii) technologies to extract energy from wastewater; and

(ix) wastewater security;

(E) to increase the effectiveness and efficiency of municipal separate storm sewer systems and combined sewer systems, including through the use of soil and vegetation or other permeable materials;

(F) to promote new water treatment technologies and management approaches, including commercialization and dissemination strategies for adoption of innovative water, wastewater, and stormwater technologies and management approaches or low-impact development technologies in the homebuilding industry; or

(G) to maintain a clearinghouse of technologies and management approaches developed under this subsection and subsections (c) and (d) at a research consortium or institute or other appropriate organization, as determined by the Administrator.

(3) FACTORS FOR CONSIDERATION.—In planning and implementing the program under this subsection, the Administrator shall take into consideration—

(A) research needs identified by water resource managers, State and local governments, and other interested parties; and

(B) technologies and processes likely to achieve the greatest increases in water quality, drinking water supply, or water use efficiency and conservation.

(4) MINORITY-SERVING INSTITUTIONS.—In carrying out the program under this subsection, the Administrator—

(A) may provide extramural grants to institutions of higher education; and

(B) shall encourage participation by minority-serving institutions.

(b) STRATEGIC RESEARCH PLAN.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator, in coordination with the heads of other appropriate Federal departments and agencies, shall develop a strategic research plan for the grant program under subsection (a).

(2) REQUIREMENTS.—

(A) COORDINATION.—The plan under paragraph (1) shall be carried out, to the maximum extent practicable, in coordination with other research and development strategic plans of the Environmental Protection Agency.

(B) CONTENTS.—The plan under paragraph (1) shall—

(i) describe, in outline form, research goals and priorities relating to an agenda of water quality, drinking water supply, and water use efficiency and conservation, including—

(I) developing innovative water supply-enhancing processes and technologies;

(II) improving existing processes and technologies, including wastewater treatment, desalination, and groundwater recharge and recovery schemes;

(III) improving the effectiveness and efficiency of nontraditional wastewater treatment practices, including nonstructural alternatives, low-impact development techniques, and decentralized approaches; and

(IV) exploring concepts that extract energy from wastewater;

(ii)(I) identify current Federal water-related research efforts directed toward achieving the goals of improving water

quality, water use efficiency, or water conservation or expanding water supply; and

(II) describe the means by which those efforts are coordinated with the program established under subsection (a) in order to leverage resources and avoid duplication;

(iii) take into consideration the public health and environmental quality impacts and cost-effectiveness of each relevant technology and approach; and

(iv) take into consideration and incorporate, as appropriate, recommendations contained in reports and studies conducted by Federal departments and agencies, the National Research Council, the National Science and Technology Council, and other appropriate entities.

(3) SCIENCE ADVISORY BOARD REVIEW.—The Administrator shall submit the plan under paragraph (1) to the Science Advisory Board of the Environmental Protection Agency for review.

(4) REVISIONS.—The plan under paragraph (1) shall be revised and amended as necessary to reflect updated scientific findings and national research priorities.

(c) MUNICIPALITIES GRANT PROGRAM.—

(1) DEFINITION OF MUNICIPALITY.—In this subsection, the term "municipality" means—

(A) a city, town, borough, county, parish, district, association, authority, or other public entity established by, or pursuant to, State law; or

(B) an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)).

(2) ESTABLISHMENT.—Not later than 90 days after the date of publication of the initial report under subsection (e)(2), the Administrator shall establish a nationwide demonstration grant program—

(A) to promote innovations in technology and alternative approaches to water quality management or water supply developed under subsection (a); and

(B) to reduce costs to municipalities incurred in complying with the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and the Safe Drinking Water Act (42 U.S.C. 300f et seq.) through the approaches and technologies developed under subsection (a).

(3) SCOPE.—The demonstration grant program shall consist of up to 10 projects each year, to be carried out in municipalities selected by the Administrator under paragraph (5).

(4) APPLICATIONS.—A municipality that seeks to participate in the demonstration grant program established under this subsection shall submit to the Administrator a plan that—

(A) is developed in coordination with—

(i) the agencies of the State having jurisdiction over water quality and water supply matters; and

(ii) interested stakeholders, including institutions of higher education and related research institutions;

(B) describes water impacts specific to urban or rural areas;

(C) includes a strategy under which the municipality, through participation in the demonstration grant program, could effectively—

(i) address water quality or water supply problems; and

(ii) achieve the water quality goals that—

(I) could be achieved using more traditional methods; and

(II) are required under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) or the Safe Drinking Water Act (42 U.S.C. 300f et seq.); and

(D) includes a schedule for achieving the water quality, water supply, or water use efficiency and conservation goals of the municipality.

(5) CATEGORIES OF PROJECTS.—

(A) IN GENERAL.—In carrying out the demonstration grant program, the Administrator shall provide grants for—

(i) projects relating to water supply, water quality, or water use efficiency and conservation matters described in subsection (a)(2); and

(ii) subject to subparagraph (B), not less than 2 projects for the incorporation into a building of the most current water use efficiency and conservation technologies and designs.

(B) PROJECTS FOR INCORPORATION.—

(i) INCREMENTAL COST LIMITATION.—A grant provided under subparagraph (A)(ii) may be used only to pay the incremental costs of incorporation into a building of a water use efficiency and conservation technology or design.

(ii) TYPES OF BUILDINGS.—Of the projects for which grants are provided under subparagraph (A)(ii)—

(I) at least 1 shall be for a residential building; and

(II) at least 1 shall be for a commercial building.

(iii) PUBLIC AVAILABILITY.—The design of each building for which a grant is provided under subparagraph (A)(ii) shall be made available to the public, and each such building shall be accessible to the public for tours and educational purposes.

(6) RESPONSIBILITIES OF ADMINISTRATOR.—In providing grants for projects under this subsection, the Administrator shall—

(A) ensure, to the maximum extent practicable, that—

(i) the demonstration grant program under this subsection includes a variety of projects with respect to—

(I) geographical distribution;

(II) innovative technologies used for the projects; and

(III) nontraditional approaches (including low-impact development technologies) used for the projects; and

(ii) each category of project described in paragraph (5) is adequately represented;

(B) give higher priority to projects that—

(i) address multiple problems; and

(ii) are regionally applicable;

(C) ensure, to the maximum extent practicable, that at least 1 community having a population of 10,000 or fewer individuals receives a grant for each fiscal year; and

(D) ensure that, for each fiscal year, no municipality receives more than 25 percent of the total amount of funds made available for the fiscal year to provide grants under this subsection.

(7) COST SHARING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the non-Federal share of the

total cost of a project funded by a grant under this subsection shall be not less than 20 percent.

(B) WAIVER.—The Administrator may reduce or eliminate the non-Federal share of the cost of a project for reasons of affordability.

(d) INCORPORATION OF RESULTS AND INFORMATION.—

(1) TECHNOLOGY TRANSFER.—The Administrator, taking into consideration the results of the projects carried out using grants under subsections (a) and (c), shall—

(A) facilitate the adoption of technologies and processes to promote increased water quality, drinking water supply, and water use efficiency and conservation; and

(B) collect and disseminate information, including through the establishment of a publicly accessible clearinghouse, regarding those technologies and processes, including information on—

(i) incentives and impediments to development and commercialization;

(ii) best practices; and

(iii) anticipated increases in water quality, drinking water supply, and water

use efficiency and conservation resulting from the implementation of specific technologies and processes.

(2) INCORPORATION OF RESULTS AND INFORMATION.—To the maximum extent practicable, the Administrator shall incorporate the results of, and information obtained from, successful projects under this section into other programs administered by the Administrator.

(e) REPORTS.—

(1) REPORTS FROM GRANT RECIPIENTS.—A recipient of a grant under this section shall submit to the Administrator, on the date of completion of a project of the recipient and on each of the dates that is 1, 2, and 3 years after that date, a report that describes the effectiveness of the project.

(2) REPORTS TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, and not less frequently than once every 2 years thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committees on Transportation and Infrastructure and Energy and Commerce of the House of Representatives a report describing—

(A) the findings of each recipient of a grant under subsection (a) with respect to the identification of any potential new technology or management approach developed by the recipient; and

(B) the status and results of the grant program under subsection (c).

(f) WATER MANAGEMENT STUDY AND REPORT.—

(1) DEFINITIONS.—In this subsection:

(A) LOW-IMPACT APPROACH.—The term "low-impact approach" means a strategy that manages rainfall at the source using decentralized microscale controls to mimic the predevelopment hydrology of the relevant site by using a design technique that infiltrates, filters, stores, evaporates, and detains runoff close to the source.

(B) SOFT PATH APPROACH.—The term "soft path approach" means a general framework that encompasses—

(i) increased efficiency of water use;

(ii) integration of water supply, wastewater treatment, and stormwater management systems; and

(iii) protection, restoration, and effective use of the natural capacities of ecosystems to provide clean water.

(2) STUDY.—

(A) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Administrator shall enter into an arrangement with the National Academy of Sciences under which the Academy shall conduct a study, by not later than 2 years after that date, of innovative, effective, and systematic approaches for the management of water supply, wastewater, and stormwater.

(B) CONTENTS.—The study shall—

(i) be based on and enhance, to the maximum extent practicable, relevant studies previously conducted by the Academy;

(ii) focus in particular on soft-path approaches and low-impact approaches to the management described in subparagraph (A);

(iii) take into consideration the costs of each approach analyzed by the study;

(iv) examine and compare the state of research, technology development, and

emerging practices in other developed and developing countries with those in the United States;

(v) identify and evaluate relevant system approaches for comprehensive water management, including the interrelationship of water systems with other major systems, such as energy and transportation systems;

(vi) identify priority research and development needs; and

(vii) assess implementation needs and barriers.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $1,000,000 for the period of fiscal years 2010 through 2012.

(3) REPORT.—

(A) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Science and Technology of the House of Representatives a report describing

the key findings of the study under paragraph (2).

(B) INCLUSIONS.—The report under subparagraph (A) shall include—

(i) an evaluation of relevant challenges and opportunities; and

(ii) recommendations for innovative and integrated solutions for use as a practical reference by water managers, planners, developers, scientists, engineers, nongovernmental organizations, Federal departments and agencies, and regulators.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $40,000,000 for each of fiscal years 2010 through 2014.

SEC. 303. AGRICULTURAL WATERSHED SUSTAINABILITY TECHNOLOGY GRANT PROGRAM.

(a) DEFINITIONS.—In this section:

(1) AGRICULTURAL COMMODITY.—The term "agricultural commodity" means—

(A) agricultural, horticultural, viticultural, and dairy products;

(B) livestock and the products of livestock;

(C) the products of poultry and bee raising;

(D) the products of forestry; and

(E) other commodities raised or produced on agricultural sites, as determined to be appropriate by the Secretary of Agriculture.

(2) AGRICULTURAL PROJECT.—The term "agricultural project" means an agricultural watershed sustainability technology pilot project that, as determined by the Administrator—

(A) is carried out at an agricultural site;

(B)(i) achieves demonstrable improvements in water quality that meet or exceed those mandated by statutory or regulatory requirements; or

(ii) improves water use efficiency; and

(C) will not substantially adversely affect agricultural commodity production, yield, profitability, or any other long-term environmental medium, including air and groundwater resources.

(3) AGRICULTURAL SITE.—The term "agricultural site" means a farming or ranching operation of a producer in the United States.

(4) PRODUCER.—The term "producer" means any person or group of persons (including an irrigation district and a drainage district) engaged in the production and sale of an agricultural commodity

that owns, or shares the ownership and risk of loss of, the agricultural commodity.

(5) REVOLVING FUND.—The term "revolving fund" means an agricultural watershed sustainability technology revolving fund—

(A) that is established by a State using amounts provided under subsection (b)(1);

(B) that is maintained and credited with repayments; and

(C) the balance of which shall be available in perpetuity for providing financial assistance.

(b) GRANTS FOR AGRICULTURAL STATE REVOLVING FUNDS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this section, the Administrator shall provide to each eligible State described in paragraph (2) 1 or more capitalization grants, that cumulatively equal no more than $1,000,000 per State, for use in establishing, within an agency of the State having jurisdiction over agriculture or environmental quality, an agricultural watershed sustainability technology revolving fund.

(2) ELIGIBLE STATES.—An eligible State referred to in paragraph (1) is a State that agrees,

prior to receipt of a capitalization grant under paragraph (1)—

(A) to establish, and deposit the funds from the grant in, a revolving fund;

(B) to provide, at a minimum, a State share in an amount equal to 20 percent of the capitalization grant;

(C) to use amounts in the revolving fund to make loans to producers in accordance with subsection (c); and

(D) to return amounts in the revolving fund if no loan applications are granted within 2 years of the receipt of the initial capitalization grant.

(c) LOANS TO PRODUCERS.—

(1) USE OF FUNDS.—A State that establishes a revolving fund under subsection (b)(2) shall use amounts in the revolving fund to provide loans to producers for use in designing and constructing agricultural projects.

(2) MAXIMUM AMOUNT OF LOAN.—The amount of a loan made to a producer using funds from a revolving fund shall not exceed $250,000, in the aggregate, for all agricultural projects serving an agricultural site of the producer.

(3) CONDITIONS ON LOANS.—A loan made to a producer using funds from a revolving fund shall—

(A) have an interest rate that is not more than the market interest rate, including an interest-free loan; and

(B) be repaid to the revolving fund not later than 20 years after the date on which funds are initially disbursed.

(d) REQUIREMENTS FOR PRODUCERS.—

(1) IN GENERAL.—A producer that seeks to receive a loan from a revolving fund shall—

(A) submit to the State within the jurisdiction of which the agricultural site of the producer is located an application that—

(i) contains such information as the State may require; and

(ii) demonstrates, to the satisfaction of the State, that each project proposed to be carried out with funds from the loan is an agricultural project; and

(B) agree to expend all funds from a loan in an expeditious and timely manner, as determined by the State.

(2) MAXIMUM PERCENTAGE OF AGRICULTURAL PROJECT COST.—Subject to subsection (c)(2), a pro-

ducer that receives a loan from a revolving fund may use funds from the loan to pay up to 100 percent of the cost of carrying out an agricultural project.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000.

SEC. 304. STATE REVOLVING FUND REVIEW PROCESS.

(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Administrator shall—

(1) consult with States, utilities, nonprofit organizations, and other Federal agencies providing financial assistance to identify ways to expedite and improve the application and review process, for the provision of assistance from—

(A) the State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.); and

(B) the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12);

(2) take such administrative action as is necessary to expedite and improve the process as the Administrator has authority to take under existing law;

(3) collect information relating to innovative approaches taken by any State to simplify the application process of the State, and provide the information to each State;

(4) conduct an evaluation of the process used to develop and carry out the needs survey under section 516(b)(1)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1375(b)(1)(B)), including recommendations for ways to streamline the development and conduct of that survey; and

(5) submit to Congress a report that, based on the information identified under paragraph (1), contains recommendations (including recommendations for legislation) to facilitate further streamlining and improvement of the process.

(b) CONSIDERATIONS.—In carrying out this section, the Administrator shall consider the needs of—

(1) small treatment works and medium treatment works (as defined in section 222 of the Federal Water Pollution Control Act);

(2) treatment works serving populations of 100,000 or more;

(3) small public water systems described in section 1433(d) of the Safe Drinking Water Act (42 U.S.C. 300i–2(d)); and

(4) public water systems described in section 1433(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300i–2(a)(2)).

SEC. 305. COST OF SERVICE STUDY.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator shall enter an arrangement with the Academy under which the Academy shall complete and provide to the Administrator the results of a study of the means by which public water systems and treatment works selected by the Academy in accordance with subsection (c) meet the costs associated with operations, maintenance, capital replacement, and regulatory requirements.

(b) REQUIRED ELEMENTS.—

(1) AFFORDABILITY.—The study shall, at a minimum—

(A) determine whether the rates at public water systems and treatment works for communities included in the study were established using a full-cost pricing model;

(B) if a full-cost pricing model was not used, identify any incentive rate systems that have been successful in significantly reducing—

(i) per capita water demand;

(ii) the volume of wastewater flows;

(iii) the volume of stormwater runoff; or

(iv) the quantity of pollution generated by stormwater;

(C) identify a set of best industry practices that public water systems and treatment works may use in establishing a rate structure that—

(i) adequately addresses the true cost of services provided to consumers by public water systems and treatment works, including infrastructure replacement;

(ii) encourages water conservation; and

(iii) takes into consideration the needs of disadvantaged individuals and communities, as identified by the Administrator;

(D) identify existing standards for affordability and the manner in which those standards are determined and defined;

(E) determine the manner in which affordability varies with respect to communities of different sizes and in different regions; and

(F) determine the extent to which affordability affects the decision of a community to increase public water system and treatment works rates (including the decision relating to the per-

centage by which those rates should be increased).

(2) DISADVANTAGED COMMUNITIES.—The study shall, at a minimum—

(A) survey a cross-section of States representing different sizes, demographics, and geographical regions;

(B) describe, for each State described in subparagraph (A), the definition of "disadvantaged community" used in the State in carrying out projects and activities under the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) review other means of identifying the meaning of the term "disadvantaged", as that term applies to communities;

(D) determine which factors and characteristics are required for a community to be considered "disadvantaged"; and

(E) evaluate the degree to which factors such as a reduction in the tax base over a period of time, a reduction in population, the loss of an industrial base, and the existence of areas of concentrated poverty are taken into account in determining whether a community is a disadvantaged community.

(c) SELECTION OF COMMUNITIES.—The Academy shall select communities, the public water system and treatment works rate structures of which are to be studied under this section, that include a cross-section of communities representing various populations, income levels, demographics, and geographical regions.

(d) USE OF RESULTS OF STUDY.—On receipt of the results of the study, the Administrator shall—

(1) submit the study to Congress;

(2) submit a report that describes the results of the study; and

(3) make the results available to treatment works and public water systems for use by the publicly owned treatment works and public water systems, on a voluntary basis, in determining whether 1 or more new approaches may be implemented at facilities of the publicly owned treatment works and public water systems.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2010 and 2014.

SEC. 306. EFFECTIVE UTILITY MANAGEMENT STRATEGIES.

(a) DEFINITIONS.—In this section:

(1) EFFECTIVE UTILITY MANAGEMENT STRATEGY.—The term "effective utility management strat-

egy'' means a strategy for the operation and management of a utility that, as determined by the Administrator, incorporates the following attributes:

(A) Product quality.

(B) Stakeholder understanding and support.

(C) Customer satisfaction.

(D) Employee development.

(E) Operational optimization.

(F) Financial viability.

(G) Infrastructure stability.

(H) Operational resiliency.

(I) Community sustainability.

(J) Water resource adequacy.

(2) UTILITY.—The term ''utility'' means—

(A) a treatment works (as defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292)); and

(B) a public water system (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f)).

(b) ACTION BY ADMINISTRATOR.—The Administrator may carry out training programs, provide technical assistance, and disseminate information regarding effective utility management strategies, including by—

(1) providing seminars and workshops (including electronic-based seminars and workshops), conferences, and other educational programs and developing curricula to advance effective utility management strategies;

(2) offering support and advice (including financial, operational, and management advice) to utility operators and managers regarding effective utility management strategies; and

(3) publishing and disseminating manuals on best management practices and other relevant information, success stories, and lessons learned relating to effective utility management strategies.

(c) PARTNER ORGANIZATIONS.—In carrying out subsection (b), the Administrator may enter into cooperative agreements, as the Administrator determines to be appropriate, with—

(1) stakeholder associations;

(2) qualified nonprofit organizations; and

(3) other relevant organizations, as determined by the Administrator.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2010 through 2014.

SEC. 307. WATERSENSE PROGRAM.

(a) ESTABLISHMENT.—There is established within the Environmental Protection Agency a program, to be known as the "WaterSense Program", to identify and promote voluntary approaches to increase water efficiency in the United States to reduce the strain on water and wastewater infrastructure and conserve water resources for future generations through voluntary labeling, promotion, or other forms of communication regarding water efficient products, programs, processes, buildings, landscapes, facilities, and services that meet the highest water conservation and performance standards.

(b) ADMINISTRATION.—The WaterSense Program shall be carried out by the Administrator.

(c) DUTIES.—In carrying out the WaterSense Program, the Administrator shall—

(1) establish—

(A) a WaterSense label to be used for certain items; and

(B) the procedure by which an item may be certified to display the WaterSense label;

(2) promote products displaying the WaterSense label as the preferred technologies in the market place for—

(A) reducing water use; and

(B) ensuring product performance;

(3) work to enhance public awareness of the WaterSense label;

(4) preserve the integrity of the WaterSense label by—

(A) developing specifications to ensure reliable performance of WaterSense-labeled products, buildings, landscapes, and services;

(B) overseeing WaterSense certifications made by third parties;

(C) conducting reviews of the use of the WaterSense label in the marketplace and taking corrective action in any case in which misuse of the label is identified; and

(D) carrying out such other measures as the Administrator determines to be appropriate;

(5) regularly research and update WaterSense product criteria for each applicable category of products;

(6) solicit comments from interested parties before establishing or revising a WaterSense product category, specification, or criterion (or before the effective date for any such product category, specification, or criterion, as applicable);

(7) on adoption of a new or revised product category, specification, or criterion, provide reasonable notice to interested parties regarding—

(A) any change (including a change of effective date) to the product category, specification, or criterion;

(B) an explanation of the change; and

(C) as appropriate, responses to comments submitted by interested parties regarding the product category, specification, or criterion;

(8) provide appropriate lead time, as determined by the Administrator, before the applicable effective date for a new or significant revision to a product category, specification, or criterion, taking into account the timing requirements of the manufacturing, product marketing, and distribution process for the specific product, programs, processes, buildings, landscapes, facilities, or services addressed; and

(9) identify and, where appropriate, implement other voluntary approaches in commercial, institutional, and industrial sectors to improve water efficiency.

(d) ANNUAL REPORTS.—Not less frequently than once each year, the Administrator shall prepare and make publicly available a report describing the activities carried out

under this section, including, to the maximum extent practicable—

(1) available information regarding sales in each WaterSense product category; and

(2) the savings of water, energy, and capital costs of water, wastewater, and stormwater infrastructure attributable to the WaterSense program and each category of WaterSense product, expressed on a national, regional, State, and watershed level.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $5,000,000 for each of fiscal years 2010 and 2011;

(2) $7,500,000 for each of fiscal years 2012 and 2013; and

(3) $10,000,000 for fiscal year 2014.

SEC. 308. PHARMACEUTICALS AND PERSONAL CARE PRODUCTS.

Section 104 of the Federal Water Pollution Control Act (33 U.S.C. 1254) is amended by adding at the end the following:

"(w) PRESENCE OF PHARMACEUTICALS AND PERSONAL CARE PRODUCTS IN WATERS OF THE UNITED STATES.—

"(1) DEFINITIONS.—In this subsection:

"(A) ACADEMY.—The term 'Academy' means the National Academy of Sciences.

"(B) PHARMACEUTICAL.—The term 'pharmaceutical' has the meaning given the term 'drug' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

"(C) PERSONAL CARE PRODUCT.—The term 'personal care product' has the meaning given the term 'cosmetic' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

"(2) STUDY.—The Administrator shall offer to enter into an arrangement with the National Academy of Sciences under which the Academy, in consultation with the Administrator, the Secretary of Health and Human Services (acting through the Commissioner of Food and Drugs), the Director of the United States Geological Survey, the heads of other appropriate Federal agencies (including the National Institute of Environmental Health Sciences), and other interested stakeholders (including manufacturers of pharmaceuticals and personal care products), shall conduct a study on the presence of pharmaceuticals and personal care products in the waters of the United States.

"(3) CONTENTS.—In conducting the study under paragraph (2), the Academy shall—

"(A) identify pharmaceuticals and personal care products that have been detected in the waters of the United States and the levels at which such pharmaceuticals and personal care products have been detected;

"(B) identify the sources of pharmaceuticals and personal care products in the waters of the United States, including point sources and nonpoint sources of pharmaceutical and personal care products; and

"(C) evaluate—

"(i) risks associated with the presence of pharmaceuticals and personal care products in the waters of the United States; and

"(ii) based upon that assessment, the technical, economic, and legal feasibility of methods to control, limit, treat, or prevent that presence.

"(4) REPORT.—Not later than 2 years after the date of enactment of this subsection, the Academy shall submit to the Administrator and Congress a report on the results of the study conducted under this subsection, including the potential effects of pharma-

ceuticals and personal care products in the waters of the United States on human health and aquatic wildlife.".

SEC. 309. FINANCING CAPABILITY GUIDANCE.

Not later than 180 days after the date of enactment of this Act, for the purpose of updating the document entitled "Combined Sewer Overflows–Guidance for Financial Capability Assessment and Schedule Development" and dated February 1997, the Administrator shall—

(1) collect and take into consideration information that can be used to assess the financial condition of permittees under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(2) consult with the affected States, municipalities, and other interested parties, as determined by the Administrator; and

(3) conduct a public outreach process.

Calendar No. 109

111TH CONGRESS
1ST SESSION

S. 1005

[Report No. 111–47]

A BILL

To amend the Federal Water Pollution Control Act and the Safe Drinking Water Act to improve water and wastewater infrastructure in the United States.

JULY 15, 2009

Reported with an amendment

Message

From: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Sent: 11/1/2016 2:35:07 PM
To: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
CC: Brown, Tristan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2524f58c2f0442cbbd025cdcbd4d1f7e-Hilton, Tri]
Subject: RE: TA on Lead Notification Provision
Attachments: Sec 7106.docx

Also, attached is a proposed revision to one of the grant programs to address this issue. Please share with the staff before the call.

From: Distefano, Nichole [mailto:DiStefano.Nichole@epa.gov]
Sent: Tuesday, November 01, 2016 9:42 AM
To: Albritton, Jason (EPW)
Cc: Brown, Tristan
Subject: RE: TA on Lead Notification Provision

What works for you? Today's calendar is a little nutty but send me some times for today and tomorrow and we can see what works.

Nichole Distefano
Associate Administrator
Office of Congressional and Intergovernmental Relations
Environmental Protection Agency
(202) 564-5200
Distefano.Nichole@epa.gov

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Tuesday, November 01, 2016 9:32 AM
To: Distefano, Nichole <DiStefano.Nichole@epa.gov>
Cc: Brown, Tristan <Brown.Tristan@epa.gov>
Subject: RE: TA on Lead Notification Provision

Sure. When?

From: Distefano, Nichole [mailto:DiStefano.Nichole@epa.gov]
Sent: Tuesday, November 01, 2016 9:31 AM
To: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Cc: Brown, Tristan <Brown.Tristan@epa.gov>
Subject: RE: TA on Lead Notification Provision

Yep. Can we just schedule a quick call?

Let me know your availability.

Nichole Distefano
Associate Administrator
Office of Congressional and Intergovernmental Relations
Environmental Protection Agency
(202) 564-5200
Distefano.Nichole@epa.gov

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Monday, October 31, 2016 3:59 PM
To: Distefano, Nichole <DiStefano.Nichole@epa.gov>
Subject: RE: TA on Lead Notification Provision

Thanks.

Can you also provide an explanation for why the administrative expenses language must be in the direct spending provision? Why could you not use money for administrative expenses if the underlying authorization has an administrative set-aside and the direct spending provisions provides money to carry out that provision of law?

From: Distefano, Nichole [mailto:DiStefano.Nichole@epa.gov]
Sent: Monday, October 31, 2016 3:56 PM
To: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Subject: RE: TA on Lead Notification Provision

It would be very difficult to administer any of the new grants with less than $1M. So in the case of the direct funding of $20M, 4% is pretty close and might work, but in the case of the clean water grant that's $10M direct spending, 4% would not be enough to administer the new grant program.

Nichole Distefano
Associate Administrator
Office of Congressional and Intergovernmental Relations
Environmental Protection Agency
(202) 564-5200
Distefano.Nichole@epa.gov

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Monday, October 31, 2016 10:16 AM
To: Distefano, Nichole <DiStefano.Nichole@epa.gov>
Subject: RE: TA on Lead Notification Provision

There is pushback on doing this without a cap on administrative expenses. We have used 4% elsewhere. Would that be sufficient?

From: Distefano, Nichole [mailto:DiStefano.Nichole@epa.gov]
Sent: Friday, October 28, 2016 2:36 PM

To: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Subject: RE: TA on Lead Notification Provision

Jason

Per your request, here is the TA on the grant funding provisions we discussed. Am calling you now on the other issue.

- 7106: Funding.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the ~~Administrator~~ Environmental Protection Agency State and Tribal Assistance Grants account ~~to provide grants to eligible entities under section 1459A of the Safe Drinking Water Act (as added by subsection (a)),~~ $20,000,000, to remain available until expended, to carry out section 1459A of the Safe Drinking Water Act (as added by subsection (a)), including the Administrator's administrative expenses.

- 7107: Funding.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the ~~Administrator~~ Environmental Protection Agency State and Tribal Assistance Grants account ~~to provide grants to eligible entities under this section under section 1459B of the Safe Drinking Water Act (as added by subsection (a)),~~ $20,000,000, to remain available until expended, to carry out section 1459B of the Safe Drinking Water Act (as added by subsection (a)), including the Administrator's administrative expenses.

- 7111: Funding.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Environmental Protection Agency State and Tribal Assistance Grants account $Y, to remain available until expended, to carry out section 1464(d) of the Safe Drinking Water Act (as amended by subsection (a)), including the Administrator's administrative expenses.

- 7304: Funding.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the ~~Administrator~~ Environmental Protection Agency State and Tribal Assistance Grants account ~~to provide grants to eligible entities under this section~~ $10,000,000, to remain available until expended, to carry out this section, including the Administrator's administrative expenses.

Nichole Distefano
Associate Administrator
Office of Congressional and Intergovernmental Relations
Environmental Protection Agency
(202) 564-5200
Distefano.Nichole@epa.gov

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Friday, October 28, 2016 1:52 PM
To: Distefano, Nichole <DiStefano.Nichole@epa.gov>
Subject: RE: TA on Lead Notification Provision

Can you call me about this? And when can you have the language about the direct spending that we discussed earlier in the week?

From: Distefano, Nichole [mailto:DiStefano.Nichole@epa.gov]
Sent: Tuesday, October 18, 2016 1:20 PM
To: Albritton, Jason (EPW)
Subject: TA on Lead Notification Provision

Jason

Per your earlier request, attached is the TA on the House lead notification provision.

Nichole Distefano
Associate Administrator
Office of Congressional and Intergovernmental Relations
Environmental Protection Agency
(202) 564-5200
Distefano.Nichole@epa.gov

Sec. 7106. Assistance for small and disadvantaged communities.

(a) In General.—Part E of the Safe Drinking Water Act (42 U.S.C. 300j et seq.) is amended by adding at the end the following:

"SEC. 1459A. ASSISTANCE FOR SMALL AND DISADVANTAGED COMMUNITIES.

"(a) Definition of Underserved Community.—In this section:

"(1) IN GENERAL.—The term 'underserved community' means a local political subdivision that, as determined by the Administrator, has an inadequate drinking water or wastewater system.

"(2) INCLUSIONS.—The term 'underserved community' includes a local political subdivision that, as determined by the Administrator—

"(A) does not have household drinking water or wastewater services; and

"(B) has a drinking water system that fails to meet health-based standards under this Act, including—

"(i) a maximum contaminant level for a primary drinking water contaminant;

"(ii) a treatment technique violation; and

"(iii) an action level exceedance.

"(b) Establishment.—

"(1) IN GENERAL.—The Administrator shall establish a program under which grants are provided to eligible entities for use in carrying out projects and activities the primary purposes of which are to assist public water systems in meeting the requirements of this Act.

"(2) INCLUSIONS.—Projects and activities under paragraph (1) include—

"(A) infrastructure investments necessary to comply with the requirements of this Act,

"(B) assistance that directly and primarily benefits the disadvantaged community on a per-household basis, and

"(C) programs to provide household water quality testing.

"(c) Eligible Entities.—An entity eligible to receive a grant under this section—

"(1) is—

"(A) a public water system as defined in section 1401;

"(B) a system that is located in an area governed by an Indian Tribe (as defined in section 1401); or

(C) a State, on behalf of an underserved community; and

"(2) serves a community that, under affordability criteria established by the State under section 1452(d)(3), is determined by the State—

"(A) to be a disadvantaged community;

"(B) to be a community that may become a disadvantaged community as a result of carrying out an eligible activity; or

"(C) to serve a community with a population of less than 10,000 individuals that the Administrator determines does not have the capacity to incur debt sufficient to finance the project under subsection (b).

"(d) Priority.—In prioritizing projects for implementation under this section, the Administrator shall give priority to systems that serve underserved communities.

"(e) Local Participation.—In prioritizing projects for implementation under this section, the Administrator shall consult with, and consider the priorities of, affected States, Indian Tribes, and local governments.

"(f) Technical, Managerial, and Financial Capability.— The Administrator may provide assistance to increase the technical, managerial and financial capability of an eligible entity receiving a grant under this section if the Administrator determines such entity lacks appropriate technical, managerial and financial capacity.

"(g) Cost Sharing.—Before carrying out any project under this section, the Administrator shall enter into a binding agreement with 1 or more non-Federal interests that shall require the non-Federal interests—

"(1) to pay not less than 45 percent of the total costs of the project, which may include services, materials, supplies, or other in-kind contributions;

"(2) to provide any land, easements, rights-of-way, and relocations necessary to carry out the project; and

"(3) to pay 100 percent of any operation, maintenance, repair, replacement, and rehabilitation costs associated with the project.

"(h) Waiver.—The Administrator may waive the requirement to pay the non-Federal share of the cost of carrying out an eligible activity using funds from a grant provided under this section if the Administrator determines that an eligible entity is unable to pay, or would experience significant financial hardship if required to pay, the non-Federal share.

"(i) LIMITATION ON USE OF FUNDS.—Not more than 4 percent of funds made available to carry out this section may be used to pay administrative costs."

(j) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section—

"(1) $230,000,000 for fiscal year 2017; and

"(2) $300,000,000 for each of fiscal years 2018 through 2021.".

(b) Funding.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Administrator to carry out ~~provide grants to eligible entities under~~ section 1459A of the Safe Drinking Water Act (as added by subsection (a)), including the Administrator's administrative costs, $20,000,000, to remain available until expended.

Message

From: Klasen, Matthew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D5BA7959EBD4929AB5AB57FBA80B21D-MKLASEN]
Sent: 8/25/2016 1:19:04 PM
To: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
CC: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]; Brown, Tristan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2524f58c2f0442cbbd025cdcbd4d1f7e-Hilton, Tri]
Subject: Re: TA Request
Attachments: 2016-08-25 EPA TA on revised WRDA Sec 7205.pdf

Hi Jason,

Attached is our TA on the revised language you sent us on Tuesday for Sec. 7205. We had folks take a quick look both at the language you highlighted below (regarding documenting any deviations from NAPA's recommendations) as well as the full revised section you forwarded along to put this language in context. As you'll see, our folks were generally OK with the explanation piece but had concerns with some of the additional added text. We also had a couple further suggestions for clarifying the guidance/replacement guidance language.

Please take a look and let us know if you have any follow-up questions.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Tuesday, August 23, 2016 11:46 AM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Can you please review the additional language below and let me know if there are any concerns? If EPA chose not to implement a recommendation in the NAPA study, it would require EPA to explain in its report to Congress why it did not do so.

(2) Explanation.—If the Administrator does not follow one or more recommendations of the study referred to in subsection (c)(1), the Administrator shall publish and submit in accordance with paragraph (1) an explanation of that decision along with the revised guidance.

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Monday, August 22, 2016 2:12 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Hi Jason,

To follow up from our call a few minutes ago, here's the language from the approps committee report (Senate Report 114–70) regarding the NAPA work, which is referenced in the text of draft WRDA Sec. 7205:

Community Affordability.--Within the funds provided, the Committee directs the EPA to contract with the National Academy of Public Administration--an independent, nonpartisan, nonprofit organization chartered by the U.S. Congress--to conduct an independent study to create a definition and framework for ``community affordability.'' The Academy shall consult with the EPA, States and localities, and such organizations, including, but not limited to the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors; review existing studies of the costs and benefits associated with major regulations under such laws as the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act; and determine how different localities can effectively fund municipal projects. The Academy shall submit a report with its findings, conclusions, and recommendations no later than 1 year after the date of contract with EPA.

Best,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Wednesday, August 17, 2016 2:57 PM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>
Cc: Distefano, Nichole <DiStefano.Nichole@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>
Subject: RE: TA Request

Can we set up a call to discuss this issue?

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Friday, August 12, 2016 4:01 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Hi Jason,

Thanks for the chance to review this revised language. Just two points, which should be easy enough to convey here vs. an attachment:

1) (Same as previously provided TA): EPA is concerned about its ability to develop high-quality, stakeholder-informed guidance in the one-year period required by this legislation. The legislative text would provide the agency with only one year after completion of the NAPA study in order to revise its Financial Capability Assessment guidance/framework. Given the requirement to consult with interested parties, it would be challenging for the agency to effectively consult with interested parties and develop a revised guidance document within one year.

2) In the revised 7205(c)(2), we would recommend that the text be clearer that the Administrator shall no longer use the FEBRUARY 1997 guidance after completion of the NAPA study. Simply saying we may not use "the guidance" as currently drafted may be ambiguous.

Let me know if you have any questions, and enjoy the weekend.

Best,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Wednesday, August 10, 2016 2:10 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Below is a further revision to the provision that EPA provided TA on back in June. Can EPA please review the updated language below?

SEC. 7205. FINANCIAL CAPABILITY GUIDANCE.

(a) Definitions.—In this section:

(1) AFFORDABILITY.—The term "affordability" means, with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, as determined by the Administrator.

(2) FINANCIAL CAPABILITY.—The term "financial capability" means the financial capability of a community to make investments necessary to make water quality or drinking water improvements.

(3) GUIDANCE.—The term "guidance" means the guidance published by the Administrator entitled "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" and dated February 1997, as applicable to the combined sewer overflows and sanitary sewer overflows guidance published by the Administrator entitled "Financial Capability Assessment Framework" and dated November 24, 2014.

(b) Use of Median Household Income.—The Administrator shall not use median household income as the sole indicator of affordability for a residential household.

(c) Revised Guidance.

(1) Updating.—Not later than 1 year after the date of completion of the National Academy of Public Administration study to establish a definition and framework for community affordability required by Senate Report 114–70, accompanying S. 1645 (114th Congress), the Administrator shall issue a revised guidance.

[(2) Use of Guidance.-- Upon completion of the revision referred to in paragraph (1), the Administrator shall no longer use the guidance.]

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Wednesday, June 15, 2016 10:53 AM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Hi Jason,

Here's our TA on the second of the two amendments you sent on Thursday afternoon -- this one dealing with integrated planning. As you can see, our comments are brief and straightforward.

Let me know if you have any questions.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Klasen, Matthew
Sent: Monday, June 13, 2016 2:02 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan; Kaiser, Sven-Erik
Subject: Re: TA Request

Hi Jason,

Apologies for the delay, but here is EPA TA on one of the pieces of language you shared with me last Thursday -- this one pertaining to potential WRDA amendments regarding the SRFs.

Please let me know if you have any questions.

I'm working on the potential integrated planning amendment TA piece this afternoon, and will also be following up on your other request from Thursday afternoon re: Sec. 7104 and on 1977 compliance schedules.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Thursday, June 9, 2016 1:54 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

ASAP. Preferably no later than tomorrow.

Also, attached is a second WRDA amendment that we would like TA on.

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Thursday, June 09, 2016 1:49 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Thanks -- I'll get this around to our folks. If you can let me know your timeline, that would help. (Nichole and Tristan are out today.)

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Thursday, June 9, 2016 1:41 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: TA Request

Can you please let us know if EPA has any concerns with the attached proposed amendment to WRDA?

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building

Tel: 202-224-8832
Fax: 202-224-1273

These EPA staff-level comments are being provided solely as technical drafting assistance. The comments should not be construed in any way as representing the policy positions of the agency or the Administration on this bill.

EPA TECHNICAL ASSISTANCE ON REVISED WRDA SECTION 7205

August 25, 2016

Legislative Text Provided for Review

SEC. 7205. FINANCIAL CAPABILITY GUIDANCE.

(a) Definitions.—In this section:

(1) Affordability.—The term "affordability" means, with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, as determined by the Administrator.

(2) Financial capability.—The term "financial capability" means the financial capability of a community to make investments necessary to make water quality or drinking water improvements.

(3) Guidance.—The term "guidance" means the guidance published by the Administrator entitled "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" and dated February 1997, as applicable to the combined sewer overflows and sanitary sewer overflows guidance published by the Administrator entitled "Financial Capability Assessment Framework" and dated November 24, 2014.

(b) Use of Median Household Income.—The Administrator shall not use median household income as the sole indicator of affordability for a residential household.

(c) Revised Guidance.

(1) Updating.—Not later than 1 year after the date of completion of the National Academy of Public Administration study to establish a definition and framework for community affordability required by Senate Report 114–70, accompanying S. 1645 (114th Congress), the Administrator shall issue a revised guidance.

(2) Use of Guidance.-- Upon completion of the revision referred to in paragraph (1), the Administrator shall no longer use the guidance (as defined in subsection (a)(3)).

(d) Consideration and Consultation.—

(1) Consideration.—In revising the guidance, the Administrator shall consider—

(A) the recommendations of the study referred to in subsection (c) and any other relevant study, as determined by the Administrator;

(B) local economic conditions, including site-specific local conditions that should be taken into consideration in analyzing financial capability;

(C) other essential community investments;

(D) potential adverse impacts on distressed populations, including the percentage of low-income ratepayers within the service area of a utility and impacts in communities with disparate economic conditions throughout the entire service area of a utility;

(E) the degree to which rates of low-income consumers would be affected by water infrastructure investments and the use of rate structures to address the rates of low-income consumers;

(F) an evaluation of an array of factors, the relative importance of which may vary across regions and localities; and

(G) the appropriate weight for economic, public health, and environmental benefits associated with improved water quality.

(2) Consultation.—Any revised guidance issued to replace the guidance shall be developed in consultation with interested parties.

(e) Publication and Submission.—

(1) In general.-- On completion of the revision of the guidance, the Administrator shall publish in the Federal Register and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the revised guidance.

(2) Explanation.—If the Administrator does not follow one or more recommendations of the study referred to in subsection (c)(1), the Administrator shall publish and submit in accordance with paragraph (1) an explanation of that decision along with the revised guidance.

EPA Technical Assistance

Section 7205(c)

- We would recommend additional revisions – for clarity only, not substance – to the "guidance replacement" language. Here are two versions that we believe would be less prone to confusion:

Option 1

(c) Revised Guidance.
~~(1)~~ Updating.—Not later than 1 year after the date of completion of the National Academy of Public Administration study to establish a definition and framework for community affordability required by Senate Report 114–70, accompanying S. 1645 (114th Congress), the Administrator shall ~~issue a revised guidance~~ revise the guidance defined in subsection (a)(3). The revised guidance shall replace the guidance defined in subsection (a)(3).
~~(2) Use of Guidance.— Upon completion of the revision referred to in paragraph (1), the Administrator shall no longer use the guidance (as defined in subsection (a)(3)).~~

Option 2

(c) Revised Guidance.
~~(1)~~ Updating.—Not later than 1 year after the date of completion of the National Academy of Public Administration study to establish a definition and framework for community affordability required by Senate Report 114–70, accompanying S. 1645 (114th Congress), the Administrator shall ~~issue a revised guidance~~ revise the guidance defined in subsection (a)(3).
(2) Use of Guidance.-- The Administrator shall use the revised guidance ~~Upon completion of the revision~~ referred to in paragraph (1) in lieu of the guidance ~~the Administrator shall no longer use the guidance (as~~ defined in subsection (a)(3)) after the revised guidance is finalized.

Section 7205(e)(2)

- EPA does not have concerns with the language that would require us to explain why the agency is not following a NAPA study recommendation (if the agency chooses not to do so).

Section 7205(d)

- Section 7205(d)(1)(G) could be read to suggest that a cost/benefit or similar analysis be used to

change the requirements of the Clean Water Act. This reading would be incorrect, as the financial capability assessment guidance is only used in developing schedules, and cannot be not used in determining compliance endpoints under the CWA. We would recommend that (G) be revised as follows:

> *G) the appropriate means ~~weight~~ for evaluating economic, public health, and environmental factors ~~benefits~~ in determining schedules ~~associated with water quality.~~*

- The considerations listed in 7205(d)(1)(C), (F) and (G) are vague and may be impractical for evaluating the financial capability of a community. EPA would recommend removing these criteria and deferring to the considerations that are recommended by the in-depth study referred to in (d)(1)(A) and (c).

- In section 7205(d)(2), we would recommend that the legislative text use the term "stakeholders" instead of "interested parties" to be more consistent with language in the Financial Capability Assessment framework, which references active engagement with stakeholders and financial experts:

> *(2) Consultation.—Any revised guidance issued to replace the guidance shall be developed in consultation with ~~interested parties~~ stakeholders.*

Message

From: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Sent: 8/23/2016 4:08:00 PM
To: Klasen, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d5ba7959ebd4929ab5ab57fba80b21d-MKlasen]
CC: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]; Brown, Tristan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2524f58c2f0442cbbd025cdcbd4d1f7e-Hilton, Tri]
Subject: RE: TA Request

Today preferred, but tomorrow is ok.

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Tuesday, August 23, 2016 12:06 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Sure, I'll get this around to folks now. Do you need feedback today, or is tomorrow OK?

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Tuesday, August 23, 2016 11:46 AM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Can you please review the additional language below and let me know if there are any concerns? If EPA chose not to implement a recommendation in the NAPA study, it would require EPA to explain in its report to Congress why it did not do so.

(2) Explanation.—If the Administrator does not follow one or more recommendations of the study referred to in subsection (c)(1), the Administrator shall publish and submit in accordance with paragraph (1) an explanation of that decision along with the revised guidance.

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Monday, August 22, 2016 2:12 PM

To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Hi Jason,

To follow up from our call a few minutes ago, here's the language from the approps committee report (Senate Report 114–70) regarding the NAPA work, which is referenced in the text of draft WRDA Sec. 7205:

Community Affordability.--Within the funds provided, the Committee directs the EPA to contract with the National Academy of Public Administration--an independent, nonpartisan, nonprofit organization chartered by the U.S. Congress--to conduct an independent study to create a definition and framework for ``community affordability.'' The Academy shall consult with the EPA, States and localities, and such organizations, including, but not limited to the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors; review existing studies of the costs and benefits associated with major regulations under such laws as the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act; and determine how different localities can effectively fund municipal projects. The Academy shall submit a report with its findings, conclusions, and recommendations no later than 1 year after the date of contract with EPA.

Best,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Wednesday, August 17, 2016 2:57 PM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>
Cc: Distefano, Nichole <DiStefano.Nichole@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>
Subject: RE: TA Request

Can we set up a call to discuss this issue?

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Friday, August 12, 2016 4:01 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Hi Jason,

Thanks for the chance to review this revised language. Just two points, which should be easy enough to convey here vs. an attachment:

1) (Same as previously provided TA): EPA is concerned about its ability to develop high-quality, stakeholder-informed guidance in the one-year period required by this legislation. The legislative text would provide the agency with only one year after completion of the NAPA study in order to revise its Financial Capability

Assessment guidance/framework. Given the requirement to consult with interested parties, it would be challenging for the agency to effectively consult with interested parties and develop a revised guidance document within one year.

2) In the revised 7205(c)(2), we would recommend that the text be clearer that the Administrator shall no longer use the FEBRUARY 1997 guidance after completion of the NAPA study. Simply saying we may not use "the guidance" as currently drafted may be ambiguous.

Let me know if you have any questions, and enjoy the weekend.

Best,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Wednesday, August 10, 2016 2:10 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Below is a further revision to the provision that EPA provided TA on back in June. Can EPA please review the updated language below?

SEC. 7205. FINANCIAL CAPABILITY GUIDANCE.

(a) Definitions.—In this section:

(1) AFFORDABILITY.—The term "affordability" means, with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, as determined by the Administrator.

(2) FINANCIAL CAPABILITY.—The term "financial capability" means the financial capability of a community to make investments necessary to make water quality or drinking water improvements.

(3) GUIDANCE.—The term "guidance" means the guidance published by the Administrator entitled "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" and dated February 1997, as applicable to the combined sewer overflows and sanitary sewer overflows guidance published by the Administrator entitled "Financial Capability Assessment Framework" and dated November 24, 2014.

(b) Use of Median Household Income.—The Administrator shall not use median household income as the sole indicator of affordability for a residential household.

(c) Revised Guidance.

(1) Updating.—Not later than 1 year after the date of completion of the National Academy of Public Administration study to establish a definition and framework for community affordability required by Senate Report 114–70, accompanying S. 1645 (114th Congress), the Administrator shall issue a revised guidance.

[(2) Use of Guidance.-- Upon completion of the revision referred to in paragraph (1), the Administrator shall no longer use the guidance.]

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Wednesday, June 15, 2016 10:53 AM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Hi Jason,

Here's our TA on the second of the two amendments you sent on Thursday afternoon -- this one dealing with integrated planning. As you can see, our comments are brief and straightforward.

Let me know if you have any questions.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Klasen, Matthew
Sent: Monday, June 13, 2016 2:02 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan; Kaiser, Sven-Erik
Subject: Re: TA Request

Hi Jason,

Apologies for the delay, but here is EPA TA on one of the pieces of language you shared with me last Thursday -- this one pertaining to potential WRDA amendments regarding the SRFs.

Please let me know if you have any questions.

I'm working on the potential integrated planning amendment TA piece this afternoon, and will also be following up on your other request from Thursday afternoon re: Sec. 7104 and on 1977 compliance schedules.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Thursday, June 9, 2016 1:54 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

ASAP. Preferably no later than tomorrow.

Also, attached is a second WRDA amendment that we would like TA on.

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Thursday, June 09, 2016 1:49 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Thanks -- I'll get this around to our folks. If you can let me know your timeline, that would help. (Nichole and Tristan are out today.)

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
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From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Thursday, June 9, 2016 1:41 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: TA Request

Can you please let us know if EPA has any concerns with the attached proposed amendment to WRDA?

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building

Tel: 202-224-8832
Fax: 202-224-1273

Message

From: Klasen, Matthew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D5BA7959EBD4929AB5AB57FBA80B21D-MKLASEN]
Sent: 8/10/2016 6:48:33 PM
To: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
CC: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]; Brown, Tristan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2524f58c2f0442cbbd025cdcbd4d1f7e-Hilton, Tri]
Subject: Re: TA Request

Sure, will do; I'll get this to our folks now. Let me know how quickly you'd like us to turn this around.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
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Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Wednesday, August 10, 2016 2:10 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Below is a further revision to the provision that EPA provided TA on back in June. Can EPA please review the updated language below?

SEC. 7205. FINANCIAL CAPABILITY GUIDANCE.

(a) Definitions.—In this section:

(1) AFFORDABILITY.—The term "affordability" means, with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, as determined by the Administrator.

(2) FINANCIAL CAPABILITY.—The term "financial capability" means the financial capability of a community to make investments necessary to make water quality or drinking water improvements.

(3) GUIDANCE.—The term "guidance" means the guidance published by the Administrator entitled "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" and dated February 1997, as applicable to the combined sewer overflows and sanitary sewer overflows guidance published by the Administrator entitled "Financial Capability Assessment Framework" and dated November 24, 2014.

(b) Use of Median Household Income.—The Administrator shall not use median household income as the sole indicator of affordability for a residential household.

(c) Revised Guidance.

(1) Updating.—Not later than 1 year after the date of completion of the National Academy of Public Administration study to establish a definition and framework for community affordability required by Senate Report 114–70, accompanying S. 1645 (114th Congress), the Administrator shall issue a revised guidance.

[(2) Use of Guidance.-- Upon completion of the revision referred to in paragraph (1), the Administrator shall no longer use the guidance.]

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Wednesday, June 15, 2016 10:53 AM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Hi Jason,

Here's our TA on the second of the two amendments you sent on Thursday afternoon -- this one dealing with integrated planning. As you can see, our comments are brief and straightforward.

Let me know if you have any questions.

Thanks,
Matt

Matt Klasen
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Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

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To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Thanks -- I'll get this around to our folks. If you can let me know your timeline, that would help. (Nichole and Tristan are out today.)

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Matt Klasen
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Cc: Distefano, Nichole; Brown, Tristan
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Can you please let us know if EPA has any concerns with the attached proposed amendment to WRDA?

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building

Tel: 202-224-8832
Fax: 202-224-1273

Message

From: Brown, Tristan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2524F58C2F0442CBBD025CDCBD4D1F7E-HILTON, TRI]
Sent: 8/17/2016 8:50:43 PM
To: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]; Klasen, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d5ba7959ebd4929ab5ab57fba80b21d-MKlasen]
CC: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: RE: TA Request

Hey Jason, can we give you a ring to discuss really quickly?

Tristan Brown
Deputy Associate Administrator for
Congressional Affairs
U.S. Environmental Protection Agency
Office: (202) 564-4113
Email: brown.tristan@epa.gov

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Wednesday, August 17, 2016 2:57 PM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>
Cc: Distefano, Nichole <DiStefano.Nichole@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>
Subject: RE: TA Request

Can we set up a call to discuss this issue?

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Friday, August 12, 2016 4:01 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Hi Jason,

Thanks for the chance to review this revised language. Just two points, which should be easy enough to convey here vs. an attachment:

1) (Same as previously provided TA): EPA is concerned about its ability to develop high-quality, stakeholder-informed guidance in the one-year period required by this legislation. The legislative text would provide the agency with only one year after completion of the NAPA study in order to revise its Financial Capability Assessment guidance/framework. Given the requirement to consult with interested parties, it would be challenging for the agency to effectively consult with interested parties and develop a revised guidance document within one year.

2) In the revised 7205(c)(2), we would recommend that the text be clearer that the Administrator shall no longer use the FEBRUARY 1997 guidance after completion of the NAPA study. Simply saying we may not use "the guidance" as currently drafted may be ambiguous.

Let me know if you have any questions, and enjoy the weekend.

Best,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Wednesday, August 10, 2016 2:10 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
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Hi Jason,

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Let me know if you have any questions.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
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From: Klasen, Matthew
Sent: Monday, June 13, 2016 2:02 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan; Kaiser, Sven-Erik
Subject: Re: TA Request

Hi Jason,

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Office of Congressional Affairs
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Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

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Sent: Thursday, June 09, 2016 1:49 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Thanks -- I'll get this around to our folks. If you can let me know your timeline, that would help. (Nichole and Tristan are out today.)

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Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
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To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: TA Request

Can you please let us know if EPA has any concerns with the attached proposed amendment to WRDA?

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building

Tel: 202-224-8832
Fax: 202-224-1273

Message

From: Brown, Tristan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2524F58C2F0442CBBD025CDCBD4D1F7E-HILTON, TRI]
Sent: 4/13/2016 9:30:44 PM
To: Black, Jonathan (Tom Udall) [Jonathan_Black@tomudall.senate.gov]
Subject: RE: Sen. Udall TSCA TA request on Industry nominated chemicals

Haha I hear you on the former and the latter.

Tristan Brown
Deputy Associate Administrator for
Congressional Affairs
U.S. Environmental Protection Agency
Office: (202) 564-4113
Email: brown.tristan@epa.gov

From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Wednesday, April 13, 2016 5:23 PM
To: Brown, Tristan <Brown.Tristan@epa.gov>
Subject: RE: Sen. Udall TSCA TA request on Industry nominated chemicals

HA!

Nervous breakdown coming.

Thank God For EPA TA!

From: Brown, Tristan [mailto:Brown.Tristan@epa.gov]
Sent: Wednesday, April 13, 2016 3:38 PM
To: Black, Jonathan (Tom Udall) <Jonathan_Black@tomudall.senate.gov>
Subject: RE: Sen. Udall TSCA TA request on Industry nominated chemicals

On a serious note--super impressed at how hard you all have been working on all of this!

Tristan Brown
Deputy Associate Administrator for
Congressional Affairs
U.S. Environmental Protection Agency
Office: (202) 564-4113
Email: brown.tristan@epa.gov

From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Wednesday, April 13, 2016 3:37 PM
To: Brown, Tristan <Brown.Tristan@epa.gov>
Subject: RE: Sen. Udall TSCA TA request on Industry nominated chemicals

Lol. of course.

From: Brown, Tristan [mailto:Brown.Tristan@epa.gov]
Sent: Wednesday, April 13, 2016 3:36 PM

To: Black, Jonathan (Tom Udall) <Jonathan_Black@tomudall.senate.gov>
Subject: RE: Sen. Udall TSCA TA request on Industry nominated chemicals

I'll have you know that we only do good jobs over here.

Tristan Brown
Deputy Associate Administrator for
Congressional Affairs
U.S. Environmental Protection Agency
Office: (202) 564-4113
Email: brown.tristan@epa.gov

From: Kaiser, Sven-Erik
Sent: Wednesday, April 13, 2016 2:49 PM
To: Berol, David <Berol.David@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>; Flattery, Priscilla <Flattery.Priscilla@epa.gov>; Grant, Brian <Grant.Brian@epa.gov>; Jones, Jim <Jones.Jim@epa.gov>; Mclean, Kevin <Mclean.Kevin@epa.gov>; Schmit, Ryan <schmit.ryan@epa.gov>
Subject: FW: Sen. Udall TSCA TA request on Industry nominated chemicals

TSCA Team – Jonathan asks about his TA request to comment on EDF language. I said we expect to have it today. I think the plan is to finish Chem ID, PBT and 5 first. Please let me know if any problem comes up.
Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Wednesday, April 13, 2016 1:57 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: RE: Sen. Udall TSCA TA request on Industry nominated chemicals

No. I want them to do a good job. Hopefully COB today? let me know if not possible.

From: Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]
Sent: Wednesday, April 13, 2016 1:56 PM
To: Black, Jonathan (Tom Udall) <Jonathan_Black@tomudall.senate.gov>
Subject: RE: Sen. Udall TSCA TA request on Industry nominated chemicals

Jonathan, we're working on it – is there a drop dead time I should tell folks. Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Wednesday, April 13, 2016 1:52 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: RE: Sen. Udall TSCA TA request on Industry nominated chemicals

Checking in...

From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Tuesday, April 12, 2016 6:19 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: FW: Sen. Udall TSCA TA request on Industry nominated chemicals

Would appreciate thoughts on these edits/suggestions from EDF

Attached see our additions to EPA's rewrite of section 6(b)(4)(E), which:

- Include consistently missed deadlines for risk evaluations and rules as an additional critical indicator of EPA being overrun by industry requests;
- Preclude EPA from allocating disproportionately more resources to industry-requested chemicals, a concept that is already in the current text; and
- Require EPA, when selecting among industry requests, to give preference to those presenting greater concern using the criteria specified in the prioritization section.

From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Tuesday, April 12, 2016 2:02 PM
To: Richard Denison; Joanna (joannaslaney@gmail.com)
Subject: FW: Sen. Udall TSCA TA request on Industry nominated chemicals

---

From: Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]
Sent: Monday, April 11, 2016 5:20 PM
To: Black, Jonathan (Tom Udall) <Jonathan_Black@tomudall.senate.gov>
Subject: Sen. Udall TSCA TA request on Industry nominated chemicals

Jonathan,
This TA responds to the request on industry nominated chemicals language.

You requested a replacement for (b)(4)(E) that would eliminate the industry cap, but nonetheless provide comparable assurance that industry prioritizations would not overrun the resources necessary for EPA priorities.

We believe the following replacement for (E)(i) and (ii) would accomplish this objective. It operates by simply shutting down the pipeline for taking further industry requests if EPA falls behind on the expected pace of pursuing its own priorities. The edits are also attached as a redline to section 6 (attached).

(E) LIMITATION AND CRITERIA

"(i) If the Administrator's designation of priority substances or conduct of risk evaluations is insufficient to satisfy the requirements of paragraph (2)(A), (2)(B), or (2)(C), then the Administrator shall accept no further requests under subparagraph (C)(ii) until the requirements of paragraph (2)(A), (2)(B), and (2)(C) are all satisfied.

(ii) Requests for risk evaluations under subparagraph (C)(ii) shall be subject to public notice and comment and to the payment of fees pursuant to section 26(b)(3)(D), and the Administrator shall not expedite or otherwise provide special treatment to such risk evaluations,

This TA only responds to changes since the last version at the time we were reviewing. All previously offered TA is still germane to the extent the provision has not changed since the TA was offered. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.

Please let me know if any additional questions. Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Monday, April 11, 2016 1:44 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: Re: Sen. Udall TSCA TA request on Industry nominated chemicals

Thanks Sven, I should have asked for you to draft to the Senate offer.

Possible to see that? Sorry.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Kaiser, Sven-Erik
Sent: Monday, April 11, 2016 1:33 PM
To: Black, Jonathan (Tom Udall)
Subject: Sen. Udall TSCA TA request on Industry nominated chemicals

Jonathan,
This TA responds to the request on industry nominated chemicals.

QUESTION: EPA has indicated that the House bill allows industry nominated chemicals to overwhelm EPA's priorities.

Is there a way to draft the house bill/proposal to allow for industry nominated chemicals to move through "without a cap" (as per the senate bill), but also without compromising EPA's priorities?

Response:

The language in question is for the House offer. It would also work with minor adjustment for the House bill as passed. There is no min/max provision in the House bill as passed, so that part has to be deleted if you are modifying the House bill as passed.

House offer

6(b)(7) MINIMUM NUMBER.--

(A) IN GENERAL.-- Subject to the availability of appropriations, the Administrator shall initiate 10 or more risk evaluations under paragraph (3)(A)(i) or (3)(B) in each fiscal year beginning in the fiscal year of the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(B) LIMITATION.-- Notwithstanding any other provision of this section, if the Administrator does not initiate 10 or more risk evaluations under (A) in any complete fiscal year following the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, then in the following fiscal year the Administrator shall not accept any requests under paragraph (3)(A)(ii) and is not subject to paragraph (3)(C)(i)(I), unless in that fiscal year the Administrator has first initiated 10 risk evaluations under (A).

House bill as passed

6(b)(7) MINIMUM NUMBER.--

(A) IN GENERAL.-- Subject to the availability of appropriations, the Administrator shall initiate 10 or more risk evaluations under paragraph (3)(A)(i) or (3)(B) in each fiscal year beginning in the fiscal year of the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

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Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: "Black, Jonathan (Tom Udall)" <Jonathan_Black@tomudall.senate.gov>
Date: April 10, 2016 at 6:07:41 PM EDT
To: "Kaiser, Sven-Erik" <Kaiser.Sven-Erik@epa.gov>
Subject: Industry nominated chemicals

Hi Sven,

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Sent: 4/7/2016 9:16:13 PM
To: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
CC: Borum, Denis [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f385dc95b8714c7cb74334eed0e1474d-DBorum]; Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Klasen, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d5ba7959ebd4929ab5ab57fba80b21d-MKlasen]; Davis, CatherineM [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9977d3119e394dcf9cf819e79b52992b-Davis, Catherine]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: FW: Affordability and Science proposals.docx
Attachments: Affordability and Science proposals.docx

Do you have a deadline, Jason?

Forwarding to Denis (and other water folks in case it's time sensitive).

Thanks

Tristan Brown
Deputy Associate Administrator for
Congressional Affairs
U.S. Environmental Protection Agency
Office: (202) 564-4113
Email: brown.tristan@epa.gov

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Thursday, April 07, 2016 4:55 PM
To: Distefano, Nichole <DiStefano.Nichole@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>
Subject: Affordability and Science proposals.docx

Can we get TA on this?

Message

From: Brown, Tristan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2524F58C2F0442CBBD025CDCBD4D1F7E-HILTON, TRI]
Sent: 6/2/2016 5:31:54 PM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
CC: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: RE: 3rd witness for UMRA
Attachments: Semiannual_Report_to_Congress--March_2016_cert.pdf

Hi Michal,

The OIG report is attached.

Fridays can be difficult to get all of the rights folks together here but for now why don't we aim for 3:30 tomorrow with your fellows re UMRA?

Thanks

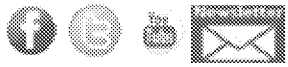
Tristan Brown
Deputy Associate Administrator for
Congressional Affairs
U.S. Environmental Protection Agency
Office: (202) 564-4113
Email: brown.tristan@epa.gov

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Thursday, June 02, 2016 11:02 AM
To: Distefano, Nichole <DiStefano.Nichole@epa.gov>
Cc: Brown, Tristan <Brown.Tristan@epa.gov>
Subject: RE: 3rd witness for UMRA

I am out tomorrow, but can coordinate a call for our team of fellows. We can also just do UMRA this week and push the GAO/IG recommendations call until next week if that helps?

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey



From: Distefano, Nichole [mailto:DiStefano.Nichole@epa.gov]
Sent: Thursday, June 02, 2016 11:01 AM
To: Freedhoff, Michal (Markey)
Cc: Brown, Tristan
Subject: Re: 3rd witness for UMRA

Thanks. So I am really sick today and don't think I'll be able to do the call today. Let's aim for tomorrow.

I am looping in Tristan to try to set something up.

Also, Tristan can you send Michal the OIG report to congress that we sent up last week.

It has a section where the IG talks about unimplemented recommendations. Take a look at those and we can work from there. They span program offices so there isn't just one person who can speak to all the issues.

Sent from my iPhone

On Jun 2, 2016, at 10:35 AM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

> Honorable John Berrey, Chairman
> Quapaw Tribe of Oklahoma
> 69300 E. Nee Rd.
> Quapaw, OK 74363
> **Ex. 6 - Personal Privacy**
>
> Michal Ilana Freedhoff, Ph.D.
> Director of Oversight & Investigations
> Office of Senator Edward J. Markey
> 255 Dirksen Senate Office Building
> Washington, DC 20510
> 202-224-2742
>
> Connect with Senator Markey
> <image001.png><image002.png><image003.png><image004.jpg>

Message

From: Cleland-Hamnett, Wendy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B84439FCDF02426ABD539D8BB6C9EF6F-CLELAND-HAMNETT, WENDY]
Sent: 2/10/2016 11:39:31 PM
To: Grant, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ec6104b72cab42ba9b1e1da67d4288ae-Grant, Brian]; Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]; Flattery, Priscilla [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bf3936418d3944f6a520c8fdba5cfdef-Flattery, Priscilla]; Ryan Schmit [Ryan.Schmit@mail.house.gov]; Mclean, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=869a9152d655420594d8f94a966b8892-KMCLEAN]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: RE: Sen. Markey TSCA TA Request on replacement parts

Replacement parts for child safety seats, strollers, etc?

Wendy Cleland-Hamnett
Director
Office of Pollution Prevention & Toxics
Office of Chemical Safety and Pollution Prevention
202 564-3810 (O) 202 564-0575 (F)
cleland-hamnett.wendy@epa.gov

From: Grant, Brian
Sent: Wednesday, February 10, 2016 6:06 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Jones, Jim <Jones.Jim@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Flattery, Priscilla <Flattery.Priscilla@epa.gov>; Ryan Schmit <Ryan.Schmit@mail.house.gov>; Mclean, Kevin <Mclean.Kevin@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>
Subject: RE: Sen. Markey TSCA TA Request on replacement parts

Here is our proposed reply on the OGC portion of the replacement part requests; per my earlier email, Wendy, I've indicated whether I think OPPT input is needed.
****

Attached are our technical comments on the bill text you sent us.

With respect to your additional questions:

TSCA excludes from the "chemical substance" definition any food or food additive as defined under the Federal Food, Drug, and Cosmetic Act (TSCA section 3(2)(B)(vi)). Because the FFDCA is implemented by FDA, EPA generally defers to FDA on the scope of this exclusion. Thus, without consulting with FDA, we cannot give a definitive answer as to whether certain items are or are not covered by TSCA.

That said, we believe that the specific items you identify (baby bottle nipples, sippy cups and straws) would most likely be considered foods within the meaning of the FFDCA and therefore outside the scope of TSCA regulation, if the regulatory concern is with migration of substances from those items into food. In addition, although we do not have

particular expertise on the FDA/CPSC MOU, it appears to us that regulation to prevent or address migration of phthalates into milk or formula from baby bottle nipples would be covered by the MOU. In any event, coverage under MOU should not be relevant to whether substances in these items are chemical substances under TSCA; that determination would turn on the scope of the FFDCA definition of "food", regardless of how FDA and CPSC have chosen to coordinate their authorities for other items or substances.

[OPPT: ADD HERE RESPONSE TO HER FINAL QUESTION: if there are other examples I should be thinking about in addition to the couch seat cover, esp if there is a child-specific one, do let me know.]

Brian Grant
EPA Office of General Counsel
202-564-5503

From: Kaiser, Sven-Erik
Sent: Monday, February 08, 2016 7:03 PM
To: Jones, Jim <Jones.Jim@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Flattery, Priscilla <Flattery.Priscilla@epa.gov>; Ryan Schmit <Ryan.Schmit@mail.house.gov>; Mclean, Kevin <Mclean.Kevin@epa.gov>; Grant, Brian <Grant.Brian@epa.gov>; Berol, David <Berol.David@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>
Subject: Fwd: Sen. Markey TSCA TA Request on replacement parts

Additional info on the Markey replacement request

Begin forwarded message:

From: "Freedhoff, Michal (Markey)" <Michal_Freedhoff@markey.senate.gov>
Date: February 8, 2016 at 6:53:40 PM EST
To: "Kaiser, Sven-Erik" <Kaiser.Sven-Erik@epa.gov>
Subject: Re: Sen. Markey TSCA TA Request on replacement parts

Additional question on this topic.

I know there is an MOU btw FDA and CPSC that describes the regulatory process for BPA in baby bottles. Does the same MOU cover the pthalates in the baby bottle nipples? If not, would that fall under "replacement parts" authority?

Would sippy cup lids or straws for straw cups fall under that authority, or is all of this FDA?

You can see where I'm going with this - if there are other examples I should be thinking about in addition to the couch seat cover, esp if there is a child-specific one, do let me know.

Thanks

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Monday, February 08, 2016 5:15 PM

To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: RE: Sen. Markey TSCA TA Request on replacement parts

Thanks Sven

In response to the comments – there is no broader document that exists, let alone that can be sent, but assume that we are talking about a section 6 provision.

The House language exempts ALL replacement parts designed prior to the effective date – and thus captures all replacement parts MANUFACTURED before the effective date as well.

I am trying to find a way to soften the House language, so that it captures the car brake pad or airplane engine part, but NOT the replacement couch seat cushion cover or replacement pacifier nipple. You guys sent me an earlier draft that would allow EPA to exempt replacement parts designed before the effective date following an affirmative finding that is similar to the language I sent. HOWEVER:

1) The House did not like that one bit. ☺
2) Even if the House did like that or my version, one would STILL presumably want to ensure that replacement parts that were manufactured prior to the effective date are exempted, even if such a finding (affirmative or not) were made.
3) That is why any final provision that doesn't exempt ALL replacement parts designed prior to the effective date would need the Senate text as well.

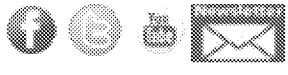
So what I am trying to propose is

- Manufactured by stays exempted
- Can we find a "designed by" provision that includes a presumption that the part would be exempted, UNLESS EPA makes a finding? If what I sent you doesn't do it, please suggest an alternative, and if you don't think your comment A3 works for that purpose, pls let me know.

Thanks
Michal

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey



From: Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]
Sent: Monday, February 08, 2016 5:07 PM
To: Freedhoff, Michal (Markey)
Subject: Sen. Markey TSCA TA Request on replacement parts

Michal,
Attached please find technical assistance that responds to your request on replacement parts. Please let me know if any questions. Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Tuesday, February 02, 2016 10:29 AM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: TA request - replacement parts

Hi Sven

Your past TA provided an option to allow EPA to exempt replacement parts designed prior to the effective date of a TSCA regulation from that regulation if EPA found that the replacement parts would not be impracticable to replace/redesign. After receiving feedback from colleagues, I have re-drafted it to make the presumption be exemption, rather than the presumption being non-exemption. Can you take a look, suggest any changes and describe any concerns you might have with implementation?

Thanks
Michal

Message

From: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Sent: 5/23/2016 1:02:01 AM
To: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]; Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]
CC: Poirier, Bettina (EPW) [Bettina_Poirier@epw.senate.gov]
Subject: Urgent Review
Attachments: LANGUAGE.docx; ATT00001.htm

Can you please review the attached language which intended to implement the list of changes we discussed earlier? In particular, can you confirm that we removed every appropriate reference of "will present" and did not leave any that will create issues?

1) Delete first 10 WP and Manufacture-requested WP chemicals from pause
   - Page 129 line 21, after "6(b)(1)(B)(i)", insert a period and delete the rest of the paragraph

2) EPA TA in section 21
   - Page 173 delete lines 4-7 and replace with "(iii) in clause (ii), by striking "section 6 or 8" and all that follows through the end of the clause and inserting "section 6(a) or 8 or an order under section 5(f), the chemical substance or mixture to be subject to such rule or order presents or will present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use"
   - Page 173 line 3 – strike "or (f)"

3) Delete Low Hazard in section 5
   - Page 20 line 9 make read "subparagraph (A), (B), or (C) of paragraph (3)"
   - Page 22 line 6, add "or" at the end
   - Page 22 line 18 delete "or"
   - Page 22 lines 19-24 – delete
   - Page 33 line 10 –delete "or in accordance with subsection (a)(3)(D) that the chemical substance is a low-hazard substance"

4) Delete Low Hazard in section 6
   - Page 38 Line 7, strike "except as provided in clause (iii),"
   - Page 38 line 17 – page 39 line 3 – delete
   - Page 41 line 12 – delete "or low-hazard"
   - Page 43 line 7 – delete "or a low-hazard substance"
   - Page 143 line 19, delete "or (iii)"

5) Remove "will present"
   - Page 12 line 19, add a new "(i) by striking "or will present"" (and re-designate the rest of the clauses as needed)
   - Page 20 line 21, delete "or will present"
   - Page 30 line 5, add a new "(iii) by striking "or will present"" (and re-designate the rest of the clauses as needed)
   - Page 35 line 17, add a new "(B) by striking "or will present"" (and re-designate the rest of the subparagraphs as needed)
   - Page 81 line 15, add a new "(ii) by striking "or will present"" (and re-designate the rest of the clauses as needed)

6) Remove "likely not" in section 5
   - Page 22 line 8 change "likely not" to "not likely"
   - Page 33 line 9 change "likely not" to "not likely"

7) Delete nomenclature savings clause
   - Page 67 lines 14-19 – delete

Message

From: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Sent: 5/23/2016 2:52:21 AM
To: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
CC: Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]; Poirier, Bettina (EPW) [Bettina_Poirier@epw.senate.gov]
Subject: RE: Urgent Review
Attachments: Offer 5.22.16.docx

Ok. Then I only have two changes to the original document - the change related to industry-requested chemicals in Sec. 6 and the striking of "will present" in the modified language for citizen suits. These are incorporated into the updated document (attached). Does this look good to you?

From: Distefano, Nichole [mailto:DiStefano.Nichole@epa.gov]
Sent: Sunday, May 22, 2016 10:49 PM
To: Albritton, Jason (EPW)
Cc: Jones, Jim ; Poirier, Bettina (EPW)
Subject: Re: Urgent Review

On reflection, we believe the "will present" in section 12(a)(2) should probably remain as is. It is the only place in TSCA where "will present" appears by itself. It is probably best read as involving a prediction as to whether an exported chemical, mixture or article will present an unreasonable risk in the United States.

Sent from my iPhone

On May 22, 2016, at 10:27 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

> Jim,
>
> In the 12(a)(2) change, are you suggesting replacing "will present" with "presents"? In current law it only says "will present", not both.
>
> Jason
>
> **From:** Jones, Jim [mailto:Jones.Jim@epa.gov]
> **Sent:** Sunday, May 22, 2016 10:11 PM
> **To:** Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
> **Cc:** Poirier, Bettina (EPW) <Bettina_Poirier@epw.senate.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>
> **Subject:** Fwd: Urgent Review
>
> There are two additional reference to "will present" that should be stricken:
> - A reference in section 12(a)(2) of current TSCA; and
> - A reference in the new language you are considering adding, per EPA TA, in Section 21 (item 2 on your list); should strike "or will present"

Aside from these two references, we do not see any additional issues with the attached language including the additionL change sent at 9:17.

Jim

From: Distefano, Nichole
Sent: Sunday, May 22, 2016 9:20 PM
To: Jones, Jim <Jones.Jim@epa.gov>; Mclean, Kevin <Mclean.Kevin@epa.gov>; Berol, David <Berol.David@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Schmit, Ryan <schmit.ryan@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Grant, Brian <Grant.Brian@epa.gov>
Subject: Fwd: Urgent Review

A little more on the list of changes. The question is whether or not the below change needs to be made in Sect 6 in order to ensure industry initiated are removed from pause.

Sent from my iPhone

Begin forwarded message:

> **From:** "Albritton, Jason (EPW)" <Jason_Albritton@epw.senate.gov>
> **Date:** May 22, 2016 at 9:17:47 PM EDT
> **To:** "Distefano, Nichole" <DiStefano.Nichole@epa.gov>
> **Subject: RE: Urgent Review**
>
> Additional change:
>
> . On p. 46, line 24 through p. 47 line 2, delete the following:
>
> "and that are not drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments"

> **From:** Distefano, Nichole [mailto:DiStefano.Nichole@epa.gov]
> **Sent:** Sunday, May 22, 2016 9:15 PM
> **To:** Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
> **Cc:** Jones, Jim <Jones.Jim@epa.gov>; Poirier, Bettina (EPW)

<Bettina_Poirier@epw.senate.gov>
Subject: Re: Urgent Review

Folks are looking at this now.

Sent from my iPhone

On May 22, 2016, at 9:02 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

> Can you please review the attached language which intended to implement the list of changes we discussed earlier? In particular, can you confirm that we removed every appropriate reference of "will present" and did not leave any that will create issues?

1) Delete first 10 WP and Manufacture-requested WP chemicals from pause
   - Page 129 line 21, after "6(b)(1)(B)(i)", insert a period and delete the rest of the paragraph

   - On p. 46, line 24 through p. 47 line 2, delete the following:

     "and that are not drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments".

Formatted: Space After: 10 pt, Line spacing: Multiple 1.15 li

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2) EPA TA in section 21
   - Page 173 delete lines 4-7 and replace with "(iii) in clause (ii), by striking "section 6 or 8" and all that follows through the end of the clause and inserting "section 6(a) or 8 or an order under section 5(f), the chemical substance or mixture to be subject to such rule or order presents ~~or will present~~ an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use"
   - Page 173 line 3 – strike "or (f)"

3) Delete Low Hazard in section 5
   - Page 20 line 9 make read "subparagraph (A), (B), or (C) of paragraph (3)"
   - Page 22 line 6, add "or" at the end
   - Page 22 line 18 delete "or"
   - Page 22 lines 19-24 – delete
   - Page 33 line 10 –delete "or in accordance with subsection (a)(3)(D) that the chemical substance is a low-hazard substance"

4) Delete Low Hazard in section 6
   - Page 38 Line 7, strike "except as provided in clause (iii),"
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   - Page 41 line 12 – delete "or low-hazard"
   - Page 43 line 7 – delete "or a low-hazard substance"
   - Page 143 line 19, delete "or (iii)"

5) Remove "will present"
   - Page 12 line 19, add a new "(i) by striking "or will present"" (and re-designate the rest of the clauses as needed)
   - Page 20 line 21, delete "or will present"
   - Page 30 line 5, add a new "(iii) by striking "or will present"" (and re-designate the rest of the clauses as needed)
   - Page 35 line 17, add a new "(B) by striking "or will present"" (and re-designate the rest of the subparagraphs as needed)
   - Page 81 line 15, add a new "(ii) by striking "or will present"" (and re-designate the rest of the clauses as needed)

6) Remove "likely not" in section 5

- Page 22 line 8 change “likely not” to “not likely”
- Page 33 line 9 change “likely not” to “not likely”

7) Delete nomenclature savings clause
   - Page 67 lines 14-19 – delete

Message

From: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Sent: 5/23/2016 12:51:28 PM
To: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]; Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]
CC: Poirier, Bettina (EPW) [Bettina_Poirier@epw.senate.gov]
Subject: FW: Text of Bipartisan Managers Amendment
Attachments: 2016mgr_01_xml.pdf; ATT00001.htm

See attached manager's amendment. In particular, can you quickly look at the change on p. 130, line 4. This is in response to EPA TA. EPA suggested adding "criminal penalty". The House changed it to "criminal penalty assessed". Can you confirm ASAP whether you think this is an issue? The amendment has to be filed by 10.

AMENDMENT TO RULES

COMMITTEE PRINT 114-54

OFFERED BY M__. _____

Page 38, beginning on line 7, strike "Except as provided in clause (iii), the Administrator" and insert the following:

"(I) IN GENERAL.—The Administrator

Page 38, strike line 17 and insert the following:

"(II) LOW-HAZARD SUBSTANCES.—

Page 62, beginning on line 5, strike "that meets the criteria prescribed by the Administrator in the rule promulgated under subsection (b)(4)(B)".

Page 107, strike lines 4 through 9 and insert "to the information;".

Page 109, line 3, strike "; and" and insert a semicolon.

Page 109, line 6, strike the period and insert "; and".

Page 109, after line 6, insert the following:

"(9) shall be disclosed as required pursuant to discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law.

Page 129, line 21, insert "section" before "6(b)(1)(B)(i)".

Page 130, line 4, insert "criminal penalty assessed," after "statute enacted,".

Page 130, line 16, insert ", 5, or 6" after "section 4".

Page 130, strike lines 17 through 21 and insert the following:

"(2) with respect to subsection (b), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in the scope of the risk evaluation pursuant to section 6(b)(4)(D);

"(3) with respect to subsection (a)(1)(B), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in any final action the Administrator takes pursuant to section 6(a) or 6(i)(1); or

Page 130, line 22, strike "(3)" and insert "(4)".

Page 143, line 19, strike "or (iii)".

Page 157, line 13, strike "and(ii)".

Page 157, line 19, strike "6(b)(4)(A)(ii)" and insert "6(b)(4)(C)(ii)"

☒

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<legis-num>Amendment to Rules</legis-num>
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<action-desc blank-lines-after="1">Offered by M_. _____</action-desc>
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</action>
</amendment-form>
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<amendment-instruction line-numbers="off"><text>Page 38, beginning on line 7, strike <quote>Except as provided in clause (iii), the Administrator</quote> and insert the following: </text></amendment-instruction>
<amendment-block id="H15F1D2A566FC4EFC984CEA51C7D5761C">
<quoted-block style="OLC" id="H2C1FA1DDAC4B4947BFA9B829453CBEF7" display-inline="no-display-inline">
<subclause id="H4DA67FAEC181469A8F35EC3CA30845BF"><enum>(I)</enum><header>In general</header><text display-inline="yes-display-inline">The Administrator</text></subclause></quoted-block>
</amendment-block></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 38, strike line 17 and insert the following:</text></amendment-instruction>
<amendment-block id="H564F590913F2440AA046200A4376569B">
<quoted-block style="OLC" id="H0A3828DE70D242E7A71EB17954674DAD" display-inline="no-display-inline">
<subclause id="HD21FCD7031CD4075845E166847D2F31D"><enum>(II)</enum><header>Low-hazard substances</header></subclause></quoted-block>
</amendment-block></amendment><amendment>

<amendment-instruction line-numbers="off"><text>Page 62, beginning on line 5, strike <quote>that meets the criteria prescribed by the Administrator in the rule promulgated under subsection (b)(4)(B)</quote>. </text></amendment-instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 107, strike lines 4 through 9 and insert <quote>to the information;</quote>. </text></amendment-instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 109, line 3, strike <quote>; and</quote> and insert a semicolon. </text></amendment-instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 109, line 6, strike the period and insert <quote>; and</quote>. </text></amendment-instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 109, after line 6, insert the following:</text></amendment-instruction>
<amendment-block id="HBB9C480EE2564AB09B62C3FDD062E6CC">
<quoted-block style="OLC" id="H66D888F7FD544E579D9DFE7DC8A872FF" display-inline="no-display-inline">
<paragraph id="HE198B00AABFB4B0F9862F1D5B73F431B"><enum>(9)</enum><text display-inline="yes-display-inline">shall be disclosed as required pursuant to discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law. </text></paragraph></quoted-block>
</amendment-block></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 129, line 21, insert <quote>section</quote> before <quote>6(b)(1)(B)(i)</quote>. </text></amendment-instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 130, line 4, insert <quote>criminal penalty assessed,</quote> after <quote>statute enacted,</quote>. </text></amendment-instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 130, line 16, insert <quote>, 5, or 6</quote> after <quote>section 4</quote>. </text></amendment-instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 130, strike lines 17 through 21 and insert the following: </text></amendment-instruction>
<amendment-block id="H8198E3FE6B0741E988FFF33D8B3B5CA4">
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<paragraph id="H37D4763FA5354EBBA329577A976F6CE3"><enum>(2)</enum><text display-inline="yes-display-inline">with respect to subsection (b), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in the scope of the risk evaluation pursuant to section 6(b)(4)(D);</text></paragraph>
<paragraph id="H5A04736EF1544FF5B47D4855322A2F5E"><enum>(3)</enum><text display-inline="yes-display-inline">with respect to subsection (a)(1)(B), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in any final action the Administrator takes pursuant to section 6(a) or 6(i)(1); or</text></paragraph></quoted-block>
</amendment-block></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 130, line 22, strike <quote>(3)</quote> and insert <quote>(4)</quote>. </text></amendment-

instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 143, line 19, strike <quote>or
(iii)</quote>. </text></amendment-instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 157, line 13, strike
<quote>and(ii)</quote>. </text></amendment-instruction></amendment><amendment>
<amendment-instruction line-numbers="off"><text>Page 157, line 19, strike
<quote>6(b)(4)(A)(ii)</quote> and insert <quote>6(b)(4)(C)(ii)</quote>
</text></amendment-instruction></amendment> </amendment-body></amendment-doc>

Message

From: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Sent: 8/25/2016 6:22:00 PM
To: Klasen, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d5ba7959ebd4929ab5ab57fba80b21d-MKlasen]
CC: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]; Brown, Tristan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2524f58c2f0442cbbd025cdcbd4d1f7e-Hilton, Tri]
Subject: RE: TA Request

Could we discuss? The criteria that the TA suggests modifying were in the previous drafts EPA provided TA on and were not flagged as an issue. Also, given that these are considerations and not requirements, EPA will have a lot of discretion in how it chooses to apply them.

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Thursday, August 25, 2016 9:19 AM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Hi Jason,

Attached is our TA on the revised language you sent us on Tuesday for Sec. 7205. We had folks take a quick look both at the language you highlighted below (regarding documenting any deviations from NAPA's recommendations) as well as the full revised section you forwarded along to put this language in context. As you'll see, our folks were generally OK with the explanation piece but had concerns with some of the additional added text. We also had a couple further suggestions for clarifying the guidance/replacement guidance language.

Please take a look and let us know if you have any follow-up questions.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
cell Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Tuesday, August 23, 2016 11:46 AM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Can you please review the additional language below and let me know if there are any concerns? If EPA chose not to implement a recommendation in the NAPA study, it would require EPA to explain in its report to Congress why it did not do so.

(2) Explanation.—If the Administrator does not follow one or more recommendations of the study referred to in subsection (c)(1), the Administrator shall publish and submit in accordance with paragraph (1) an explanation of that decision along with the revised guidance.

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Monday, August 22, 2016 2:12 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Hi Jason,

To follow up from our call a few minutes ago, here's the language from the approps committee report (Senate Report 114–70) regarding the NAPA work, which is referenced in the text of draft WRDA Sec. 7205:

Community Affordability.--Within the funds provided, the Committee directs the EPA to contract with the National Academy of Public Administration--an independent, nonpartisan, nonprofit organization chartered by the U.S. Congress--to conduct an independent study to create a definition and framework for ``community affordability.'' The Academy shall consult with the EPA, States and localities, and such organizations, including, but not limited to the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors; review existing studies of the costs and benefits associated with major regulations under such laws as the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act; and determine how different localities can effectively fund municipal projects. The Academy shall submit a report with its findings, conclusions, and recommendations no later than 1 year after the date of contract with EPA.

Best,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
cell Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) [mailto:Jason_Albritton@epw.senate.gov]
Sent: Wednesday, August 17, 2016 2:57 PM
To: Klasen, Matthew <Klasen.Matthew@epa.gov>
Cc: Distefano, Nichole <DiStefano.Nichole@epa.gov>; Brown, Tristan <Brown.Tristan@epa.gov>
Subject: RE: TA Request

Can we set up a call to discuss this issue?

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Friday, August 12, 2016 4:01 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Hi Jason,

Thanks for the chance to review this revised language. Just two points, which should be easy enough to convey here vs. an attachment:

1) (Same as previously provided TA): EPA is concerned about its ability to develop high-quality, stakeholder-informed guidance in the one-year period required by this legislation. The legislative text would provide the agency with only one year after completion of the NAPA study in order to revise its Financial Capability Assessment guidance/framework. Given the requirement to consult with interested parties, it would be challenging for the agency to effectively consult with interested parties and develop a revised guidance document within one year.

2) In the revised 7205(c)(2), we would recommend that the text be clearer that the Administrator shall no longer use the FEBRUARY 1997 guidance after completion of the NAPA study. Simply saying we may not use "the guidance" as currently drafted may be ambiguous.

Let me know if you have any questions, and enjoy the weekend.

Best,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
cell Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Wednesday, August 10, 2016 2:10 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

Below is a further revision to the provision that EPA provided TA on back in June. Can EPA please review the updated language below?

SEC. 7205. FINANCIAL CAPABILITY GUIDANCE.
(a) Definitions.—In this section:
(1) AFFORDABILITY.—The term "affordability" means, with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, as determined by the Administrator.

(2) FINANCIAL CAPABILITY.—The term "financial capability" means the financial capability of a community to make investments necessary to make water quality or drinking water improvements.

(3) GUIDANCE.—The term "guidance" means the guidance published by the Administrator entitled "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" and dated February 1997, as applicable to the combined sewer overflows and sanitary sewer overflows guidance published by the Administrator entitled "Financial Capability Assessment Framework" and dated November 24, 2014.

(b) Use of Median Household Income.—The Administrator shall not use median household income as the sole indicator of affordability for a residential household.

(c) Revised Guidance.

(1) Updating.—Not later than 1 year after the date of completion of the National Academy of Public Administration study to establish a definition and framework for community affordability required by Senate Report 114–70, accompanying S. 1645 (114th Congress), the Administrator shall issue a revised guidance.

[(2) Use of Guidance.-- Upon completion of the revision referred to in paragraph (1), the Administrator shall no longer use the guidance.]

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Wednesday, June 15, 2016 10:53 AM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Hi Jason,

Here's our TA on the second of the two amendments you sent on Thursday afternoon -- this one dealing with integrated planning. As you can see, our comments are brief and straightforward.

Let me know if you have any questions.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
cell Ex. 6 - Personal Privacy

From: Klasen, Matthew
Sent: Monday, June 13, 2016 2:02 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan; Kaiser, Sven-Erik
Subject: Re: TA Request

Hi Jason,

Apologies for the delay, but here is EPA TA on one of the pieces of language you shared with me last Thursday -- this one pertaining to potential WRDA amendments regarding the SRFs.

Please let me know if you have any questions.

I'm working on the potential integrated planning amendment TA piece this afternoon, and will also be following up on your other request from Thursday afternoon re: Sec. 7104 and on 1977 compliance schedules.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
cell Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Thursday, June 9, 2016 1:54 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: RE: TA Request

ASAP. Preferably no later than tomorrow.

Also, attached is a second WRDA amendment that we would like TA on.

From: Klasen, Matthew [mailto:Klasen.Matthew@epa.gov]
Sent: Thursday, June 09, 2016 1:49 PM
To: Albritton, Jason (EPW)
Cc: Distefano, Nichole; Brown, Tristan
Subject: Re: TA Request

Thanks -- I'll get this around to our folks. If you can let me know your timeline, that would help. (Nichole and Tristan are out today.)

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443N
202-566-0780
cell Ex. 6 - Personal Privacy

From: Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov>
Sent: Thursday, June 9, 2016 1:41 PM
To: Klasen, Matthew
Cc: Distefano, Nichole; Brown, Tristan
Subject: TA Request

Can you please let us know if EPA has any concerns with the attached proposed amendment to WRDA?

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building

Tel: 202-224-8832
Fax: 202-224-1273

Message

From: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Sent: 9/8/2016 6:32:21 PM
To: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: MCC16603_XML Gold King.doc
Attachments: MCC16603_XML Gold King.doc

Latest version.

Purpose: To include a provision relating to Gold King Mine spill recovery.

S. 2848

To provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT INTENDED TO BE PROPOSED BY _____ to the amendment (No. 4979) proposed by Mr. INHOFE

Viz:

At the end of title VIII, add the following:

SEC. 8____. GOLD KING MINE SPILL RECOVERY.

(a) Definitions.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) GOLD KING MINE SPILL.—The term "Gold King Mine spill" means the discharge on August 5, 2015, of approximately 3,000,000 gallons of contaminated water from the Gold King Mine north of Silverton, Colorado, into Cement Creek that occurred while contractors of the Environmental Protection Agency were conducting an investigation of the Gold King Mine.

(3) National Contingency Plan.—The term "National Contingency Plan" means the regulations found at Part 300, Code of Federal Regulations, title 40, or successor regulations.

(4) Response.—The term "response" has the meaning that term is given in section 101(25) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(25)).

~~(b) Office of Gold King Mine Spill Claims.—~~

~~(1) ESTABLISHMENT.—There is established within the Environmental Protection Agency an Office of Gold King Mine Spill Claims, to be known as the "Office of Gold King Mine Spill Claims" (referred to in this subsection as the "Office").~~

~~(2) PURPOSE.—The Office shall receive, process, and pay claims under chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act") on an ongoing basis for claimants that may have additional claims arising out of, or relating to, the Gold King Mine spill.~~

~~(3) TREATMENT.—The establishment of the Office by this subsection shall not diminish the ability of the Administrator to carry out the responsibilities of the Environmental Protection Agency under any other provision of law.~~

~~(4) AUTHORIZATION OF EXISTING FUNDS.—~~

~~(A) USE OF EXISTING FUNDS.—The Administrator shall carry out this subsection using amounts otherwise made available to the Administrator.~~

~~(B) NO ADDITIONAL FUNDS FOR STAFF.—No additional funds are authorized to be appropriated to the Administrator to provide staff for the Office.~~

~~(5) SUNSET.—The Office shall cease to exist on the date that is the earlier of—~~

~~(A) the date on which all claims arising out of, or relating to, the Gold King Mine spill have been paid; or~~

~~(B) 3 years after the date of enactment of this Act.~~

(b~~c~~) Gold King Mine Spill Claims Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act.—

(1) IN GENERAL.—The Administrator shall, consistent with the N~~n~~ational C~~c~~ontingency P~~p~~lan, receive and ~~,~~ process~~, and pay~~ under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), and pay from appropriations made available to the Administrator to carry out such Act, claims arising out of, or related to, the Gold King Mine spill.

(2) ELIGIBLE COSTS~~CLAIMS~~.— Response costs are eligible for payment by the Administrator under subsection (a)

(1) without regard to when such costs are incurred and

(2) include all costs incurred by a State, Indian tribe, or any other person that are not inconsistent with the National Contingency Plan. ~~The Administrator shall receive, process, and pay under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) claims arising out of, or related to, the Gold King Mine spill that otherwise would be ineligible under that Act or the national contingency plan if the response action carried out by the claimant is not inconsistent with the national contingency plan as described in section 107 of that Act (42 U.S.C. 9607).~~

(3) PRESUMPTION.—

~~(A) IN GENERAL.—~~Response costs claimed under paragraph (1) are deemed to be eligible costs and shall be paid by the Administrator unless the Administrator presents substantial evidence that such costs are inconsistent with the National Contingency

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Plan. ~~Subject to subparagraph (B), a claim for reimbursement for costs of removal or remedial action described in section 107(a)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)(4)(A)) and any other costs of response arising out of, or related to, the Gold King Mine spill shall—~~

~~(i) be presumed to be reasonable; and~~

~~(ii) be accepted and reimbursed by the Administrator.~~

~~(B) LIMITATION.—The Administrator may deduct an amount from the reimbursement to the injured person under subparagraph (A) only if the Administrator presents evidence to the injured person that the costs described in section 107(a)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)(4)(A)) requested by the injured person are—~~

~~(i) arbitrary; and~~

~~(ii) grossly excessive.~~

(4) Applicable Standard.—A determination whether a response cost is not inconsistent with the National Contingency Plan, shall be based on the same standard that the United States applies when seeking recovery of its own response costs from responsible parties under in section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607).

(5~~4~~) TIMING.—

(A) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall pay claims submitted to the Administrator before that date of enactment.

(B) SUBSEQUENTLY FILED CLAIMS.—Not later than 90 days after the date on which a claim is submitted to the Administrator under this subsection, the Administrator shall pay the claim.

(d) Water Quality Program.—

(1) IN GENERAL.—In response to the Gold King Mine spill, the Administrator, in conjunction with affected States, Indian tribes, and local governments, shall develop and implement a program for long-term water quality monitoring of rivers contaminated by the Gold King Mine spill.

(2) REQUIREMENTS.—In carrying out the program described in paragraph (1), the Administrator, in conjunction with affected States, Indian tribes, and local governments, shall—

(A) collect water quality samples and sediment data;

(B) provide the public with a means of viewing the samples and data referred to in subparagraph (A) by, at a minimum, posting the information on the website of the Administrator;

(C) take any other relevant measure necessary to assist affected States and Indian

tribes with long-term water monitoring; and

(D) carry out additional program activities, as determined by the Administrator.

(3) AUTHORIZATION.—There is authorized to be appropriated to the

~~(A) IN GENERAL.—The~~ Administrator such sums as may be necessary to ~~may~~ reimburse affected States and Indian tribes the costs of ~~for~~ long-term water quality monitoring of any river contaminated by the Administrator.

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~~(B) FUNDING.—Notwithstanding any other provision of law, the Administrator may use funds made available under the State and Tribal Assistance Grant Program of the Environmental Protection Agency to reimburse State and Indian tribes under subparagraph (A).~~

Message

From: Distefano, Nichole [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31D32A3A3A9E4591B5FDFC3EB96E8B78-DISTEFANO,]
Sent: 9/8/2016 2:38:00 AM
To: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Subject: Re: Gold King

It's circulating for review. Too early for me to tell for sure but I think there will be significant concerns.

Sent from my iPhone

On Sep 7, 2016, at 7:26 PM, Albritton, Jason (EPW) <Jason_Albritton@epw.senate.gov> wrote:

> Need to know by tomorrow AM if EPA has any concerns with the language below. It will likely be a Udall-Gardner amendment to WRDA.
> Thanks
> SEC. 2. DEFINITIONS.
>
> In this Act:
>
> (1) ADMINISTRATOR.-The term "Administrator" means the Administrator of the Environmental Protection Agency.
>
> (2) GOLD KING MINE SPILL.-The term "Gold King Mine spill" means the discharge on August 5, 2015, of approximately 3,000,000 gallons of contaminated water from the Gold King Mine north of Silverton, Colorado, into Cement Creek that occurred while contractors of the Environmental Protection Agency were conducting an investigation of the Gold King Mine.
> SEC. 3. GOLD KING MINE SPILL CLAIMS PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT.
>
> (a) In General.-The Administrator shall, consistent with the national contingency plan, receive, process, and pay under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) arising out of, or claims related to the Gold King Mine spill.
>
> (b) Eligible Claims.-The Administrator shall receive, process, and pay under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) arising out of, or claims related to the Gold King Mine spill that otherwise would be ineligible under that Act or the national contingency plan if the response action carried out by the claimant is not inconsistent with the national contingency plan as described in section 107 of that Act (42 U.S.C. 9607).
>
> (c) Presumption.-Claims for reimbursement of costs of removal or remedial action described in section 107 of CERCLA (42 U.S.C. 9607) and any other costs of response arising out of, or related to, the Gold King Mine spill shall be presumed to be reasonable and shall be accepted and reimbursed by the Administrator. Only upon a showing by the Administrator that the costs identified under section 107 of CERCLA are arbitrary and that the amount requested is grossly excessive, may the Administrator deduct those arbitrary and grossly excessive amounts from the reimbursement to the injured person. Prior to any such deduction, the Administrator must provide evidence to the injured person that the amount requested is arbitrary and grossly excessive.
>
> (d) Timing.-
>
> (1) IN GENERAL.-(a) The Administrator shall pay claims submitted before enactment of this Act not later than 90 days after the enactment of this Act.
>
> (b) The Administrator shall pay claims filed after the enactment of this Act not later than 90 days after the claim is submitted.
> SEC. 4. WATER QUALITY PROGRAM.

(a) In General.-In response to the Gold King Mine spill, the Administrator, in coordination with affected States and Indian tribes, shall, in conjunction with affected States, Indian tribes, and local governments, develop and implement a program for long-term water quality monitoring of rivers contaminated by the Gold King Mine spill.

(b) Requirements.-In carrying out the program described in subsection (a), the Administrator in conjunction with affected States, Indian tribes, and local governments shall -

(1) collect water quality samples and sediment data;

(2) provide the public with a means of viewing the samples and data referred to in paragraph (1) by, at a minimum, posting the information on the website of the Administrator;

(3) take any other relevant measure necessary to assist affected States and Indian tribes with long-term water monitoring; and

(4) carry out additional program activities, as determined by the Administrator.

(5) AUTHORIZATION.- The Administrator may reimburse affected States, Indian tribes, and local governments for long-term water quality monitoring of rivers contaminated by the Gold King Mine Spill.

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building
Tel: 202-224-8832
Fax: 202-224-1273

Message

From: Albritton, Jason (EPW) [Jason_Albritton@epw.senate.gov]
Sent: 5/25/2016 10:03:30 PM
To: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
CC: Poirier, Bettina (EPW) [Bettina_Poirier@epw.senate.gov]
Subject: TSCA Legislative History
Attachments: Statement for the Record.docx

Nichole,

I understand EPA has provided input on the attached document. Can you let us know if you have reviewed this version and if you have any additional comments?

Jason Albritton
Senior Policy Advisor
Senate Committee on Environment and Public Works
Senator Barbara Boxer, Ranking Member
456 Dirksen Senate Office Building

Tel: 202-224-8832
Fax: 202-224-1273

Statement for the Record
Motion to Concur in the House amendment to the Senate amendment to the bill H.R. 2576 entitled "An Act to modernize the Toxic Substances Control Act, and for other purposes" (hereinafter to be referred to as the Frank R. Lautenberg Chemical Safety for the 21st Century Act)
May XX, 2016
Senator Edward J. Markey

As the lead Senate Democratic negotiators on the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and in the absence of a conference report to clarify Congressional intent, we submit the following non-exhaustive list that describes the intent of the House-Senate negotiators of the final bill text that was enacted into law. The issues listed do not represent the totality of the decisions made by those involved in the bicameral negotiations; rather, they represent the decisions that we feel could most benefit from an assertion of Congressional intent.

1. "Will Present"

Existing TSCA as in effect before the date of enactment of Frank R. Lautenberg Chemical Safety for the 21st Century Act includes the authority, contained in several sections (see, for example, section 6(a)), for EPA to take regulatory actions related to chemical substances or mixtures if it determines that the chemical substance or mixture "presents or will present" an unreasonable risk to health or the environment.

The Frank R. Lautenberg Chemical Safety for the 21st Century Act includes language that removes all instances of "will present" from existing TSCA and the amendments thereto.

This does not reflect an intent on the part of Congressional negotiators to remove EPA's authority to consider how a chemical substance or mixture might impact health or the environment under un-intended circumstances or in the future.

In fact, a new definition added to TSCA explicitly provides such authority and a mandate for EPA to consider the potential for an un-intended or future impact of a chemical substance under the "conditions of use":

> '(4) The term 'conditions of use' means the circumstances, as determined by the Administrator, under which a chemical substance is ***intended,*** known, or ***reasonably foreseen*** to be manufactured, processed, distributed in commerce, used, or disposed of.'';

2. Mixtures

In section 6(b) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, EPA is directed to undertake risk evaluations on chemical substances in order to determine whether they pose an unreasonable risk to health or the environment. Some have questioned whether the failure to explicitly authorize risk evaluations on mixtures calls into question EPA's authority to evaluate the risks from chemical substances in mixtures.

The definition of 'conditions of use' inserted above would clearly enable EPA to evaluate the use of the chemical substance in any context that could give rise to risks of concern, including in a mixture.

3. New Chemicals

Existing TSCA provides no mandate for EPA to review new chemicals prior to market entry. While EPA has instituted a review process, the burden is wholly on EPA to find a concern; if EPA lacks needed information to conduct a meaningful review, or fails to do so, manufacture of the new chemical can automatically commence. This bill makes significant changes to this passive approach under current law: For the first time, EPA will be required to make an affirmative finding of safety as a condition for commencement of manufacture. If EPA lacks sufficient information, it must either preclude market entry or impose conditions sufficient to ensure that any potential risk is amelioriated. This affirmative approach to better ensuring the safety of new chemicals entering the market is essential to restoring the public's confidence in our chemical safety system.

4. Unreasonable Risk

TSCA as in effect before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act authorized EPA to regulate chemical substances if it determined that the chemical substance "presents or will present an *unreasonable risk of injury* to health or the environment." In its decision in Corrosion Proof Fittings vs EPA[1], the U.S. Court of Appeals, 5th Circuit overturned EPA's proposed ban on asbestos, in part because it believed that

> "In evaluating what is "unreasonable," the EPA is required to consider the costs of any proposed actions and to "carry out this chapter in a reasonable and prudent manner [after considering] the environmental, economic, and social impact of any action." 15 U.S.C. § 2601(c).
>
> As the District of Columbia Circuit stated when evaluating similar language governing the Federal Hazardous Substances Act, "[t]he requirement that the risk be `unreasonable' necessarily involves a balancing test like that familiar in tort law: The regulation may issue if the severity of the injury that may result from the product, factored by the likelihood of the injury, offsets the harm the regulation itself imposes upon manufacturers and consumers." *Forester v. CPSC*, 559 F.2d 774, 789 (D.C.Cir.1977). We have quoted this language approvingly when evaluating other statutes using similar language. *See, e.g., Aqua Slide*, 569 F.2d at 839."

The Frank R. Lautenberg Chemical Safety for the 21st Century Act clearly rejects that approach to determining what "unreasonable risk of injury to health or the environment" means, by adding text that directs EPA to determine whether such risks exist "without consideration of costs or other nonrisk factors." In this manner, Congress has ensured that when EPA evaluates a chemical to determine whether it poses an unreasonable risk to health or the environment, it does not apply the sort of "balancing test" described above.

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[1] 947 F.2d 1201 (1991)

5. Prioritization

Section 6(b) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, defines high-priority chemical substances and low-priority chemical substances as follows:

> "(i) The Administrator shall designate as a high-priority substance a chemical substance that the Administrator concludes, without consideration of costs or other nonrisk factors, may present an unreasonable risk of injury to health or environment because of a potential hazard and a potential route of exposure under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator.
> ''(ii) LOW-PRIORITY SUBSTANCES.— The Administrator shall designate a chemical substance as a low-priority substance if the Administrator concludes, based on information sufficient to establish, without consideration of costs or other nonrisk factors, that such substance does not meet the standard identified in clause (i) for designating a chemical substance a high-priority substance."

The direction to EPA for the designation of low-priority substances is of note in that it requires such designations to be made only when there is "information sufficient to establish" that the standard for designating a substance as a high-priority substance is not met. Clear authority is provided under section 4(a)(2)(B), as created in the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to enable EPA to obtain the information needed to prioritize chemicals for which information is initially insufficient. The bill text also goes on to state that if "the information available to the Administrator at the end of such an extension [for testing of a chemical substance in order to determine its priority designation] remains insufficient to enable the designation of the chemical substance as a low-priority substance, the Administrator shall designate the chemical substance as a high-priority substance."

These provisions are intended to ensure that the only chemicals to be designated low-priority are those for which EPA both has sufficient information and affirmatively does NOT conclude that the substance may present an unreasonable risk.

6. Pace of and long-term goal for EPA safety reviews of existing chemicals

Existing TSCA grandfathered in tens of thousands of chemicals to the inventory without requiring any review of their safety. The Frank R. Lautenberg Chemical Safety for the 21st Century Act sets in motion a process under which EPA will for the first time systematically review the safety of chemicals in active commerce. While this will take many years, the goal of the legislation is to ensure that all chemicals on the market get such a review. The initial targets for numbers of reviews are relatively low, reflecting current EPA capacity and resources. These targets represent floors, not ceilings, and Senate Democratic negotiators expect that as EPA begins to collect fees, gets procedures established and gains experience, these targets can be exceeded in furtherance of the legislation's goals.

7. "Maximum" extent practicable

Several sections of the Frank R. Lautenberg Chemical Safety for the 21st Century Act include direction to EPA to take certain actions to "the extent practicable", in contrast to language in S 697 as reported by the Senate that actions be taken to "the *maximum* extent practicable." During House-Senate negotiations on the bill, Senate negotiators were informed that House Legislative Counsel believed the terms "extent practicable" and "maximum extent practicable" are synonymous, and ultimately Congress agreed to include "extent practicable" in the Frank R. Lautenberg Chemical Safety for the 21st Century Act with the expectation that no change in meaning from S 697 as reported by the Senate be inferred from that agreement.

8. Cost considerations in rulemaking

Section 6(c)(2) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act lists what is required in analysis intended to support an EPA rule for a chemical substance or mixture:

> ''(2) REQUIREMENTS FOR RULE.— ''(A) STATEMENT OF EFFECTS.—In proposing and promulgating a rule under subsection (a) with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement based on reasonably available information with respect to—
> ''(i) the effects of the chemical substance or mixture on health and the magnitude of the exposure of human beings to the chemical substance or mixture;
> ''(ii) the effects of the chemical substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture;
> ''(iii) the benefits of the chemical substance or mixture for various uses; and
> ''(iv) the reasonably ascertainable economic consequences of the rule, including consideration of—
> ''(I) the likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health;
> ''(II) the costs and benefits of the proposed and final regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator; and
> "(III) the cost effectiveness of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.

The language above specifies the manner in which EPA is to consider effects, exposures and costs associated with regulating a chemical substance. Senate Democratic negotiators further clarify that sections 6(c)(2)(A)(i) and (ii) do not require EPA to conduct a second risk evaluation-like analysis to identify the specified information, but rather, that EPA is required to consider the evaluations of health and environmental effects and exposures developed in the risk evaluation itself as it determines what regulatory actions to take.

Clauses (i)-(iv) delineate factors EPA is to consider in deciding among restrictions in a rule under subsection (a). The extent of such consideration is bounded in two important respects: first, it is to be based on information reasonably available to EPA, and hence does not require new information collection or development; and second, consideration of these factors does not in any manner negate or lessen the requirement that the restrictions EPA imposes under the rule be sufficient to ensure that the subject chemical substance no longer presents the unreasonable risk EPA has identified.

The provision's requirement that EPA consider costs and benefits and the cost-effectiveness of its regulatory action and 1 or more primary alternative regulatory actions is also further bounded: EPA need only consider such factors for the 1 or more "primary" alternatives it considered, not every possible alternative; and these considerations do not require EPA to demonstrate benefits outweigh costs, determine definitively the least-cost alternative, or to select an option that is demonstrably cost-effective. Rather, it requires only that EPA take into account such information in deciding among restrictions to impose, which must be sufficient to ensure that the subject chemical substance no longer presents the unreasonable risk EPA has identified. The Frank R. Lautenberg Chemical Safety for the 21st Century Act clearly rejects the regulatory approach and framework that led to the failed asbestos ban and phase-out rule of 1989 in *Corrosion Proof Fittings v. EPA* 947 F.2d 1201 (5th Cir. 1991).

9. "Minimum" labeling requirements

Section 6(a) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, ensures that the requirements EPA can impose to address an unreasonable risk to health or the environment include requiring "clear and adequate minimum" warnings. The addition of the word "minimum" was intended to avoid the sort of litigation that was undertaken in ***Wyeth v. Levine***, 555 U.S. 555 (2009), when a plaintiff won a Supreme Court decision after alleging that the harm she suffered from a drug that had been labeled in accordance with FDA requirements had nevertheless been inadequately labeled under Vermont law. This ensures that manufacturers or processors of chemical substances and mixtures can always take additional measures, if in the interest of protecting health and the environment, it would be reasonable to do so.

10. Critical Use Exemptions

Section 6(g) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, authorizes EPA to exempt specific conditions of use from otherwise applicable section 6(a) rule requirements, if EPA makes specified findings. Section 6(g)(4) in turn requires EPA to include in such an exemption conditions that are "necessary to protect health and the environment while achieving the purposes of the exemption." It is Congress' intent that the conditions EPA imposes will protect health and the environment to the extent feasible, recognizing that, by its nature, an exemption will allow for activities that present some degree of unreasonable risk.

11. **Regulatory Compliance**

Several sections of the Frank R. Lautenberg Chemical Safety for the 21st Century Act clarify the Congressional intent that compliance with federal EPA standards, rules or other requirements shall not preclude liability in circumstances where a reasonable manufacturer or processor or distributor of a chemical substance or mixture could or should have taken additional measures or precautions in the interest of protecting public health and the environment.

12. TSCA as the Primary Statute for the Regulation of Toxic Substances

EPA's authorities and duties under section 6 of TSCA have been significantly expanded under the Frank R. Lautenberg Chemical Safety for the 21st Century Act, now including comprehensive deadlines and throughput expectations for chemical prioritization, risk evaluation, and risk management. The interagency referral process and the intra-agency consideration process established under Section 9 of existing TSCA must now be regarded in a different light since TSCA can no longer be construed as a "gap-filler" statutory authority of last resort. Accordingly, Section 9 has been revised to ensure that once it is clear that a chemical substance presents an unreasonable risk, these processes will not conflict with the fundamental expectation that EPA ensure in a timely manner that the chemical substance no longer presents such risk.

The question of whether existing regulation of a chemical substance (either by EPA or other authorities) adequately mitigates the risks of a chemical substance is one that EPA would consider in the course of its risk evaluation under Section 6. It is not a separate factor that EPA may invoke under Section 9 to allow unreasonable risks to persist. Once EPA has identified that a chemical substance presents an unreasonable risk, Section 9(a) is not intended to supersede or modify the Agency's obligations under Sections 6(a) or 7 to address risks from activities involving the chemical substance, except as expressly identified in a section 9(a) referral for further regulation by another agency.

Regarding EPA's consideration of whether to use non-TSCA EPA authorities in order to address unreasonable chemical risks identified under TSCA, the new section 9(b)(2) merely consolidates existing language which was previously split between section 6(c) and section 9(b). It only applies where the Administrator has already determined that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by additional actions taken under other EPA authorities. It allows the Administrator substantial discretion to use TSCA nonetheless, and it certainly does not reflect that TSCA is an authority of last resort in such cases. Furthermore, none of these revisions were intended to alter the clear intent of Congress, reflected in the original legislative history of TSCA, that these decisions would be completely discretionary with the Administrator and not subject to judicial review in any manner.

13. **Disclosure of Confidential Business Information**

S 697 as passed by the Senate included several requirements as amendments to sections 8 and 14 of existing TSCA that direct EPA to "promptly" make confidential business information public when it determines that protections against disclosure of such information should no longer apply. The Frank R. Lautenberg Chemical Safety for the 21st Century Act instead directs EPA to remove the protections against disclosure when it determines that they should no longer apply. Because EPA informed Senate negotiators that its practice is to promptly make public information that is no longer protected against disclosure, we see no difference or distinction in meaning between the language in S 697 as passed and the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and expect EPA to continue its current practice of affirmatively making public information that is not or no longer protected from disclosure.

Subsection 14(d)(9) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, further clarifies the Congressional intent that any information required pursuant to discovery, subpoena, court order, or any other judicial process is always allowable and discoverable under State and Federal law, and not protected from disclosure.

14. Chemical Identity

Section 14(b)(2) of the bill retains TSCA's provision making clear that information from health and safety studies is not protected from disclosure. It also retains TSCA's two existing exceptions from disclosure of information from health and safety studies: for information where disclosure would disclose either how a chemical is manufactured or processed or the portion a chemical comprises in a mixture. A clarification has been added to the provision to note explicitly that the specific identity of a chemical is among the types of information that need not be disclosed, when disclosing health and safety information, if doing so would also disclose how a chemical is made or the portion a chemical comprises in a mixture. This clarification does not signal any Congressional intent to alter the meaning of the provision, only to clarify its intent.

15. **"Requirements"**

Subsection 5(i)(2) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act clarifies the Congressional intent to ensure that state requirements, including legal causes of action arising under statutory or common law, are not preempted or limited in any way by EPA action or inaction on a chemical substance.

Subsection 6(j) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, clarifies the Congressional intent to ensure that state requirements, including legal causes of action arising under statutory or common law, are not preempted or limited in any way by EPA action or inaction on a chemical substance.

16. **State-Federal Relationship**

Sections 18(a)(1)(B) and 18(b)(1) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, refer to circumstances under which a state may not establish or continue to enforce a "statute, criminal penalty, or administrative action" on a chemical substance. Section 18(b)(2) states that "this subsection does not restrict the authority of a State or political subdivision of a State to continue to enforce any statute enacted, criminal penalty ***assessed***, or administrative action taken". In an email transmitted by Senate Republican negotiators at 11:45 AM on May 23, 2016, the Senate requested that House Legislative Counsel delete the word "assessed," but this change was not made in advance of the 12 PM deadline to file the bill text with the House Rules Committee. The Senate's clear intent was *not to* change or in any way limit the meaning of the phrase "criminal penalty" in section 18(b)(2).

Section 18(d)(1) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, references "risk evaluations" on chemical substances that may be conducted by states or political subdivisions of states with the clear intent to describe the circumstances in which such efforts would not be preempted by federal action. The term "Risk Evaluation" may

not be universally utilized in every state or political subdivision of a state, but researching each analogous term used in each state or political subdivision of a state in order to explicitly list it was neither realistic nor possible. The use of this term is not intended to be in any way limiting.

Section 18(d)(1)(A)(ii) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, fully preserves the authority of states or political subdivisions of states to impose "information obligation" requirements on manufacturers or processors with respect to chemicals they produce or use. The provision cites examples of such obligations: reporting and monitoring or "other information obligations." These may include, but are not limited to, state requirements related to information, such as companies' obligations to disclose use information or to label products or chemicals with certain information.

Section 18(d)(2) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, specifies that nothing in this section shall modify the preemptive effect of any prior rule or order by the Administrator prior to the effective date, responding to concerns that prior EPA action on substances such as polychlorinated biphenyl would be potentially immunized from liability for injury or harm.

Section 18(e) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, grandfathers existing and enacted state laws, regulatory actions, and requirements later imposed under the authority of state laws that were in effect on August 31, 2003.

Section 18(f) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, provides discretionary and mandatory waivers which exempt regulatory action by states and their political subdivisions from any federal preemptive effect. Subsection 18(f)(2)(B) further specifies the Congressional intent that regulatory action by states and their political subdivisions shall not be subject to any federal preemptive effect upon the enactment of any relevant statute, or the proposal or completion of a preliminary administrative action prohibiting or otherwise regulating a chemical substance or mixture.

Section 18(g) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, specifies that no preemption of any common law or statutory causes of action for civil relief or criminal conduct shall occur, and that nothing in this Act shall be interpreted as dispositive or otherwise limiting any civil action or other claim for relief. This section also clarifies the Congressional intent to ensure that state requirements, including legal causes of action arising under statutory or common law, are not preempted or limited in any way by EPA action or inaction on a chemical substance. This section further clarifies Congress' intent that no express, implied, or actual conflict exists between any federal regulatory action and any state, federal, or maritime tort action, responding to the perceived conflict contemplated in *Geier v. American Honda Motor Co.,* 529 U.S. 861 (2000) and its progeny.

17. **Fees**

Fees under section 26(b), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, are authorized to be collected so that 25% of EPA's overall costs to carry out section 4, 5, and 6, and to collect, process, review, provide access to and protect from disclosure information, are defrayed, subject to a $25,000,000 cap (that itself can be adjusted for inflation

or if it no longer provides 25% of EPA's costs listed above). While the collection of fees is tied to the submission of particular information or the manufacturing or processing of a particular chemical substance undergoing a risk evaluation, in general the use of these fees is not limited to defraying the cost of the action that was the basis for the fee. The exception to this general principle is for fees to defray the cost of conducting manufacturer requested risk evaluations. These must be spent on the particular risk evaluation that was the basis for the fee. This limitation applies only to the fee collected for purpose of conducting the risk evaluation and does not prevent EPA from collecting further fees from such persons for other uses for which fees are authorized under the section. For example, if that risk evaluation later leads to risk management action, EPA may assign further fees to manufacturers and processors of that substance, subject to the $25,000,000 cap and the requirement to not exceed 25% of overall program costs for carrying out sections 4, 5, and 6.

We also note that some have raised the possibility that section 26(b)(4)(B)(i)(I), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, could be read to exclude the cost of risk evaluations, other than industry-requested risk evaluations, from the costs that can be covered by fees. This was not the intent. As clearly indicated in section 26(b)(1), Congress intends that manufacturers and processors of chemicals subject to risk evaluations be subject to fees, and that fees be collected to defray the cost of administering sections 4, 5, and 6, and of collecting, processing, reviewing and providing access to and protecting from disclosure information. Risk evaluations are a central element of section 6. And as demonstrated by section 6(b)(4)(F)(i), the intent of the bill is that the EPA-initiated risk evaluations be defrayed at the 25% level (subject to the $25,000,000 cap), in contrast to the industry-initiated evaluations, which are funded at the 50% or 100% level. The final citation in section 26(b)(4)(B)(i) should be read as section 6(b)(4)(C)(ii), as it is in section 6(b)(4)(F)(i), not to section 6(b) generally.

18. **Partial Risk Evaluations**

Section 26(l)(4) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, states

> ''(4) CHEMICAL SUBSTANCES WITH COMPLETED RISK ASSESSMENTS.—With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which the Administrator has published a completed risk assessment prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator may publish proposed and final rules under section 6(a) that are consistent with the scope of the completed risk assessment for the chemical substance and consistent with other applicable requirements of section 6."

EPA has completed risk assessments on TCE, NMP, and MC, but has not yet proposed or finalized section 6(a) rules to address the risks that were identified. During the bicameral negotiations, EPA conveyed its concern that these risk assessments were not conducted across all conditions of use of these chemical substances, because existing TSCA does not require this to be done. EPA was concerned that if it proposed 6(a) rules to regulate these substances after the Frank R. Lautenberg Chemical Safety for the 21st Century Act was enacted, the rules could be invalidated through litigation because the risk assessments did not consider all conditions of use, and additionally noted the concern that, if EPA delayed its rules for these substances in order to

conduct a full risk evaluation across all conditions of use, the imposition of important public health protections that are known to be needed would also be delayed. Congress shared these concerns. The language House-Senate negotiators included above is intended to allow EPA to proceed with the regulation of these substances if the scope of the proposed and final rules is consistent with the scope of the risk assessments conducted on these substances (even where the risk assessments did not include a consideration of all conditions of use).

Message

From: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Sent: 6/2/2016 8:29:39 PM
To: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: redline
Attachments: TSCA Redlined w Lautenberg Act V2.pdf

Here is the first one I've received. I'm told it has some errors in it which will be fixed, but figured I would send along in case it helps.

Michal Ilana Freedhoff, Ph.D.
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Connect with Senator Markey

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This document is the text of the Toxic Substances Control Act, red-lined to reflect the amendments made by HR 2576, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, as passed by the House of Representatives on May 24, 2016. This document is an initial draft; annotated and corrected versions will be forthcoming. Please visit http://www.sidley.com/en/services/environmental where you will be able to find a link to Sidley's Chemicals practice site and find this document as well as other information relating to TSCA and the Lautenberg Act. For questions or additional information, please contact: Roger Martella, rmartella@sidley.com, 202-736-8097 or Judah Prero, jprero@sidley.com, 202-736-8451.

Public Law No. 94-469, 90 Stat. 2003 (Oct. 11, 1976)

AN ACT

To regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "~~Toxic Substances Control Act~~Frank R. Lautenberg Chemical Safety for the 21st Century Act".

~~TABLE OF CONTENTS~~

SEC. 2 [§ 2601]. FINDINGS, POLICY, AND INTENT

(a) FINDINGS.—The Congress finds that—

(1) human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;

(2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances and mixtures also necessitates the regulation of intrastate commerce in such chemical substances and mixtures.

(b) POLICY.—It is the policy of the United States that—

(1) adequate ~~data~~ information should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such ~~data~~ information should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;

(2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and

(3) authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment.

(c) INTENT OF CONGRESS.—It is the intent of Congress that the Administrator shall carry out this Act in a reasonable and prudent manner, and that the Administrator shall consider the environmental, economic, and social impact of any action the Administrator takes or proposes ~~to take~~as provided under this Act.

SEC. 3 [§ 2602]. DEFINITIONS

As used in this Act [*15 U.S.C. §§ 2601* et seq.]:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) (A) Except as provided in subparagraph (B), the term "chemical substance" means any organic or inorganic substance of a particular molecular identity, including—

(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and

(ii) any element or uncombined radical.

(B) Such term does not include—

(i) any mixture,

(ii) any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act [*7 U.S.C. §§ 136* et seq.]) when manufactured, processed, or distributed in commerce for use as a pesticide,

(iii) tobacco or any tobacco product,

(iv) any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 [*42 U.S.C. §§ 2011* et seq.] and regulations issued under such Act),

(v) any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 [1986] [*26 U.S.C. § 4181*] (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such Code), and

(vi) any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act [*21 U.S.C. § 321*]) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

The term "food" as used in clause (vi) of this subparagraph includes poultry and poultry products (as defined in sections 4(e) and 4(f) of the Poultry Products Inspection Act [*21 U.S.C. § 453(e)* and 4(f)]), meat and meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [*21 U.S.C. § 601(j)*]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [*21 U.S.C. § 1033*]).

(3) The term "commerce" means trade, traffic, transportation, or other commerce (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, transportation, or commerce described in clause (A).

(4) The term 'conditions of use' means the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.

(45) The terms "distribute in commerce" and "distribution in commerce" when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture mean to sell, or the sale of, the substance, mixture, or article in commerce;

to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

(~~5~~6) The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(7) The term 'guidance' means any significant written guidance of general applicability prepared by the Administrator.

(~~6~~8) The term "health and safety study" means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying ~~data~~ information and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this Act [*15 U.S.C. §§ 2601* et seq.].

(~~7~~9) The term "manufacture" means to import into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), produce, or manufacture.

(~~8~~10) The term "mixture" means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

(~~9~~11) The term "new chemical substance" means any chemical substance which is not included in the chemical substance list compiled and published under section 8(b) [*15 U.S.C. § 2607(b)*].

(12) The term 'potentially exposed or susceptible subpopulation' means a group of individuals within the general population identified by the Administrator who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly.

(~~10~~3) The term "process" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce—

(A) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(B) as part of an article containing the chemical substance or mixture.

(~~11~~4) The term "processor" means any person who processes a chemical substance or mixture.

(12~~5~~) The term "~~standards~~ protocols and methodologies for the development of ~~test data~~information" means a prescription of—

(A) the—

(i) health and environmental effects, and

(ii) information relating to toxicity, persistence, and other characteristics which affect health and the environment,

for which ~~test data~~ information for a chemical substance or mixture are to be developed and any analysis that is to be performed on such ~~data~~information, and

(B) to the extent necessary to assure that ~~data~~information respecting such effects and characteristics are reliable and adequate—

(i) the manner in which such ~~data~~information are to be developed,

(ii) the specification of any test protocol or methodology to be employed in the development of such ~~data~~information, and

(iii) such other requirements as are necessary to provide such assurance.

(13~~6~~) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

(14~~7~~) The term "United States", when used in the geographic sense, means all of the States.

SEC. 4 [§ 2603]. TESTING OF CHEMICAL SUBSTANCES AND MIXTURES

(a) TESTING REQUIREMENTS.— (1) If the Administrator finds that—

~~(1) (A) (i)~~(A)(i)(I) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(~~ii~~II) there ~~are insufficient data~~is insufficient information and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(~~iii~~III) testing of such substance or mixture with respect to such effects is necessary to develop ~~such data~~such information; or

~~(B) (i)~~(ii)(I) a chemical substance or mixture is or will be produced in substantial quantities, and (~~I~~aa) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (~~II~~bb) there is or may be significant or substantial human exposure to such substance or mixture,

(~~ii~~II) there ~~are insufficient data~~is insufficient information and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(~~iii~~III) testing of such substance or mixture with respect to such effects is necessary to develop such ~~data~~information; and

(~~2~~B) in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture;

the Administrator shall by rule~~-~~, or, in the case of a chemical substance or mixture described in subparagraph (A)(i), by rule, order, or consent agreement, require that testing be conducted on such substance or mixture to develop ~~data~~information with respect to the health and environmental effects for which there is an insufficiency of ~~data~~information and experience and which ~~are~~is relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture, or that any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

(2) ADDITIONAL TESTING AUTHORITY.—In addition to the authority provided under paragraph (1), the Administrator may, by rule, order, or consent agreement—

(A) require the development of new information relating to a chemical substance or mixture if the Administrator determines that the information is necessary—

(i) to review a notice under section 5 or to perform a risk evaluation under section 6(b);

(ii) to implement a requirement imposed in a rule, order, or consent agreement under subsection (e) or (f) of section 5 or in a rule promulgated under section 6(a);

(iii) at the request of a Federal implementing authority under another Federal law, to meet the regulatory testing needs of that authority with regard to toxicity and exposure; or

(iv) pursuant to section 12(a)(2); and

(B) require the development of new information for the purposes of prioritizing a chemical substance under section 6(b) only if the Administrator determines that such information is necessary to establish the priority of the substance, subject to the limitations that—

(i) not later than 90 days after the date of receipt of information regarding a chemical substance complying with a rule, order, or consent agreement under this subparagraph, the Administrator shall designate the chemical substance as a high-priority substance or a low-priority substance; and

(ii) information required by the Administrator under this subparagraph shall not be required for the purposes of establishing or implementing a minimum information requirement of broader applicability.

(3) STATEMENT OF NEED.—When requiring the development of new information relating to a chemical substance or mixture under paragraph (2), the Administrator shall identify the need for the new information, describe how information reasonably available to the Administrator was used to inform the decision to require new information, explain the basis for any decision that requires the use of vertebrate animals, and, as applicable, explain why issuance of an order is warranted instead of promulgating a rule or entering into a consent agreement.

(4) TIERED TESTING.—When requiring the development of new information under this subsection, the Administrator shall employ a tiered screening and testing process, under which the results of screening-level tests or assessments of available information inform the decision as to whether 1 or more additional tests are necessary, unless information available to the Administrator justifies more advanced testing of potential health or environmental effects or potential exposure without first conducting screening-level testing.

(b) TESTING REQUIREMENT RULE, ORDER, OR CONSENT AGREEMENT.—

(1) A rule, order, or consent agreement under subsection (a) shall include—
(A) identification of the chemical substance or mixture for which testing is required under the rule, order, or consent agreement,
(B) ~~standards~~protocols and methodologies for the development of ~~test data~~information for such substance or mixture, and
(C) with respect to chemical substances which are not new chemical substances and to mixtures, a specification of the period (which period may not be of unreasonable duration) within which the persons required to conduct the testing shall submit to the Administrator ~~data~~information developed in accordance with the ~~standards~~protocols and methodologies referred to in subparagraph (B).

In determining the ~~standards~~protocols and methodologies and period to be included, pursuant to subparagraphs (B) and (C), in a rule, order, or consent agreement under subsection (a), the Administrator's considerations shall include the relative costs of the various test protocols and methodologies which may be required under the rule, order, or consent agreement and the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule, order, or consent agreement. Any such rule, order, or consent agreement may require the submission to the Administrator of preliminary ~~data~~information during the period prescribed under subparagraph (C).

(2) (A) The health and environmental effects for which ~~standards~~protocols and methodologies for the development of ~~test data~~information may be prescribed include carcinogenesis, mutagenesis, teratogenesis, behavioral disorders, cumulative or synergistic effects, and any other effect which may present an unreasonable risk of injury to health or the environment. Protocols and methodologies for the development of information may also be prescribed for the assessment of exposure or exposure potential to humans or the environment. The characteristics of chemical substances and mixtures for which such standards may be prescribed include persistence, acute toxicity, subacute toxicity, chronic toxicity, and any other characteristic which may present such a risk. The methodologies that may be prescribed in such ~~standards~~protocols and methodologies include epidemiologic studies, serial or ~~hierarchical tests~~tiered testing, in vitro tests, and whole animal tests, except that before prescribing epidemiologic studies of employees, the Administrator shall consult with the Director of the National Institute for Occupational Safety and Health.
(B) From time to time, but not less than once each 12 months, the Administrator shall review the adequacy of the ~~standards~~protocols and methodologies for development of ~~data~~information prescribed in rules, orders, and consent agreements under subsection (a) and shall, if necessary, institute proceedings to make appropriate revisions of such ~~standards~~protocols and methodologies.

(3) (A) A rule or order under subsection (a) respecting a chemical substance or mixture shall require the persons described in subparagraph (B) or (C), as applicable to conduct tests and submit data to the Administrator on such substance or mixture, except that the Administrator may permit two or more of such persons to designate one such person or a qualified third party to conduct such tests and submit such ~~data~~ information on behalf of the persons making the designation.

(B) The following persons shall be required to conduct tests and submit ~~data~~ information on a chemical substance or mixture subject to a rule under subsection (a)(1):

(i) Each person who manufactures or intends to manufacture such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(~~ii~~)(II) or (a)(1)(~~B~~A)(ii)(II) with respect to the manufacture of such substance or mixture.

(ii) Each person who processes or intends to process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(~~ii~~)(II) or (a)(1)(~~B~~A)(ii)(II) with respect to the processing of such substance or mixture.

(iii) Each person who manufactures or processes or intends to manufacture or process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii)(II) or (a)(1)(~~B~~A)(ii)(II) with respect to the distribution in commerce, use, or disposal of such substance or mixture.

(C) A rule or order under paragraph (1) or (2) of subsection (a) may require the development of information by any person who manufactures or processes, or intends to manufacture or process, a chemical substance or mixture subject to the rule or order.

(4) Any rule, order, or consent agreement under subsection (a) requiring the testing of and submission of ~~data~~information for a particular chemical substance or mixture shall expire at the end of the reimbursement period (as defined in subsection (c)(3)(B)) which is applicable to ~~test data~~information for such substance or mixture unless the Administrator repeals the rule or order or modifies the consent agreement to terminate the requirement before such date; and a rule under subsection (a) requiring the testing of and submission of ~~data~~information for a category of chemical substances or mixtures shall expire with respect to a chemical substance or mixture included in the category at the end of the reimbursement period (as so defined) which is applicable to test data for such substance or mixture unless the Administrator before such date repeals or modifes the application of the rule, order, or consent agreement to such substance or mixture or repeals the rule or order or modifies the consent agreement to terminate the requirement.

~~(5) Rules issued under subsection (a) (and any substantive amendment thereto or repeal thereof) shall be promulgated pursuant to *section 553 of title 5, United States Code*, except that (A) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (B) a transcript shall be made of any oral presentation; and (C) the Administrator shall make and publish with the rule the findings described in paragraph (1)(A) or (1)(B) of subsection (a) and, in the case of a rule respecting a mixture, the finding described in paragraph (2) of such subsection.~~

(c) EXEMPTION.—

(1) Any person required by a rule or order under subsection (a) to conduct tests and submit ~~data~~ information on a chemical substance or mixture may apply to the Administrator (in such form and manner as the Administrator shall prescribe) for an exemption from such requirement.

(2) If, upon receipt of an application under paragraph (1), the Administrator determines that—

(A) the chemical substance or mixture with respect to which such application was submitted is equivalent to a chemical substance or mixture for which ~~data~~ information has been submitted to the Administrator in accordance with a rule, order, or consent agreement under subsection (a) or for which ~~data~~ information is being developed pursuant to such a rule, order, or consent agreement, and

(B) submission of ~~data~~information by the applicant on such substance or mixture would be duplicative of ~~data~~information which has been submitted to the Administrator in accordance with such rule, order, or consent agreement or which is being developed pursuant to such rule, order, or consent agreement,

the Administrator shall exempt, in accordance with paragraph (3) or (4), the applicant from conducting tests and submitting ~~data~~information on such substance or mixture under the rule or order with respect to which such application was submitted.

(3) (A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit ~~test data~~information on a chemical substance or mixture is granted on the basis of the existence of previously submitted ~~test data~~information and if such exemption is granted during the reimbursement period for such ~~test data~~information (as prescribed by subparagraph (B)), then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted such ~~test data~~information, for a portion of the costs incurred by such person in complying with the requirement to submit such ~~data~~information, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the person to be reimbursed and the share of the market for such substance or mixture of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) For purposes of subparagraph (A), the reimbursement period for any ~~test data~~information for a chemical substance or mixture is a period—

(i) beginning on the date such ~~data~~information is submitted in accordance with a rule, order, or consent agreement ~~promulgated~~ under subsection (a), and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and which is equal to the period which the Administrator determines was necessary to develop such ~~data~~information,

whichever is later.

(4) (A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit ~~test data~~information on a chemical substance or mixture is granted on the basis of the fact that ~~test data~~information is being developed by one or more persons pursuant to a rule, order, or consent agreement ~~promulgated~~ under subsection (a), then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to each such person who is developing such ~~test data~~information, for a portion of the costs incurred by each such person in complying with such rule, order, or consent agreement, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to the costs of complying with such rule, order, or consent agreement, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider the factors described in the second sentence of paragraph (3)(A). An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) If any exemption is granted under paragraph (2) on the basis of the fact that one or more persons are developing ~~test data~~information pursuant to a rule, order, or consent agreement ~~promulgated~~ under subsection (a) and if after such exemption is granted the Administrator determines that no such person has complied with such rule, order, or consent agreement, the Administrator shall (i) after providing written notice to the person who holds such exemption and an opportunity for a hearing, by order terminate such exemption, and (ii) notify in writing such person of the requirements of the rule or order with respect to which such exemption was granted.

(d) NOTICE.—Upon the receipt of any ~~test data~~information pursuant to a rule, order, or consent agreement under subsection (a), the Administrator shall publish a notice of the receipt of such ~~data~~information in the Federal Register within 15 days of its receipt. Subject to section 14 [*15 U.S.C. § 2613*], each such notice shall (1) identify the chemical substance or mixture for which ~~data~~information ~~have~~has been received; (2) list the uses or intended uses of such substance or mixture and the information required by the applicable ~~standards~~protocols and methodologies for the development of ~~test data~~information; and (3) describe the nature of the ~~test data~~information developed. Except as otherwise provided in section 14 [*15 U.S.C. § 2613*], such ~~data~~information shall be made available by the Administrator for examination by any person.

(e) PRIORITY LIST.—

(1) (A) There is established a committee to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the ~~promulgation~~development of ~~a rule~~information under subsection (a). In making such a recommendation with respect to any chemical substance or mixture, the committee shall consider all relevant factors, including—

(i) the quantities in which the substance or mixture is or will be manufactured,
(ii) the quantities in which the substance or mixture enters or will enter the environment,
(iii) the number of individuals who are or will be exposed to the substance or mixture in their places of employment and the duration of such exposure,
(iv) the extent to which human beings are or will be exposed to the substance or mixture,
(v) the extent to which the substance or mixture is closely related to a chemical substance or mixture which is known to present an unreasonable risk of injury to health or the environment,
(vi) the existence of ~~data~~information concerning the effects of the substance or mixture on health or the environment,
(vii) the extent to which testing of the substance or mixture may result in the development of ~~data~~information upon which the effects of the substance or mixture on health or the environment can reasonably be determined or predicted, and
(viii) the reasonably foreseeable availability of facilities and personnel for performing testing on the substance or mixture.

The recommendations of the committee shall be in the form of a list of chemical substances and mixtures which shall be set forth, either by individual substance or mixture or by groups of substances or mixtures, in the order in which the committee determines the Administrator should take action under subsection (a) with respect to the substances and mixtures. In establishing such list, the committee shall give priority attention to those chemical substances and mixtures which are known to cause or contribute to or which are suspected of causing or contributing to cancer, gene mutations, or birth defects. The committee shall designate chemical substances and mixtures on the list with respect to which the committee determines the Administrator should, within 12 months of the date on which such substances and mixtures are first designated, initiate a proceeding under subsection (a). The total number of chemical substances and mixtures on the list which are designated under the preceding sentence may not, at any time, exceed 50.

(B) As soon as practicable but not later than nine months after the effective date of this Act [*15 U.S.C. § 2601* effective date note], the committee shall publish in the Federal Register and transmit to the Administrator the list and designations required by subparagraph (A) together with the reasons for the committee's inclusion of each chemical substance or mixture on the list. At least every six months after the date of the transmission to the Administrator of the list pursuant to the preceeding [preceding] sentence, the committee shall make such revisions in the list as it determines to be necessary and shall transmit them to the Administrator together with the committee's reasons for the revisions. Upon receipt of any such revision, the Administrator shall publish in the Federal Register the list with such revision, the reasons for such revision, and the designations made under subparagraph (A). The Administrator shall provide reasonable opportunity to any interested person to file with the Administrator written comments on the committee's list, any revision of such list by the committee, and designations made by the committee, and shall make such comments available to the public. Within the 12-month period beginning on the date of the first inclusion on the list of a chemical substance or mixture designated by the committee under subparagraph (A) the Administrator shall with respect to such chemical substance or mixture ~~either initiate a rulemaking proceeding under subsection (a) or if such a proceeding is not initiated within such period, publish in the Federal Register the Administrator's reason for not initiating such a proceeding~~issue an order, enter into a consent agreement, or initiate a

rulemaking proceeding under subsection (a), or, if such an order or consent agreement is not issued or such a proceeding is not initiated within such period, publish in the Federal Register the Administrator's reason for not issuing such an order, entering into such a consent agreement, or initiating such a proceeding.

(2) (A) The committee established by paragraph (1)(A) shall consist of ~~eight~~ten members as follows:

(i) One member appointed by the Administrator from the Environmental Protection Agency.

(ii) One member appointed by the Secretary of Labor from officers or employees of the Department of Labor engaged in the Secretary's activities under the Occupational Safety and Health Act of 1970.

(iii) One member appointed by the Chairman of the Council on Environmental Quality from the Council or its officers or employees.

(iv) One member appointed by the Director of the National Institute for Occupational Safety and Health from officers or employees of the Institute.

(v) One member appointed by the Director of the National Institute of Environmental Health Sciences from officers or employees of the Institute.

(vi) One member appointed by the Director of the National Cancer Institute from officers or employees of the Institute.

(vii) One member appointed by the Director of the National Science Foundation from officers or employees of the Foundation.

(viii) One member appointed by the Secretary of Commerce from officers or employees of the Department of Commerce.

(ix) One member appointed by the Chairman of the Consumer Product Safety Commission from Commissioners or employees of the Commission.

(x) One member appointed by the Commissioner of Food and Drugs from employees of the Food and Drug Administration.

(B) (i) An appointed member may designate an individual to serve on the committee on the member's behalf. Such a designation may be made only with the approval of the applicable appointing authority and only if the individual is from the entity from which the member was appointed.

(ii) No individual may serve as a member of the committee for more than four years in the aggregate. If any member of the committee leaves the entity from which the member was appointed, such member may not continue as a member of the committee, and the member's position shall be considered to be vacant. A vacancy in the committee shall be filled in the same manner in which the original appointment was made.

(iii) Initial appointments to the committee shall be made not later than the 60th day after the effective date of this Act [*15 U.S.C. § 2601* effective date note]. Not later than the 90th day after such date the members of the committee shall hold a meeting for the selection of a chairperson from among their number.

(C) (i) No member of the committee, or designee of such member, shall accept employment or compensation from any person subject to any requirement of this Act [*15 U.S.C. §§ 2601* et seq.] or of any rule promulgated or order issued thereunder, for a period of at least 12 months after termination of service on the committee.

(ii) No person, while serving as a member of the committee, or designee of such member, may own any stocks or bonds, or have any pecuniary interest, of substantial value in any person engaged in the manufacture, processing, or distribution in commerce of any chemical substance or mixture subject to any requirement of this Act [*15 U.S.C. §§ 2601* et seq.] or of any rule promulgated or order issued thereunder.

(iii) The Administrator, acting through attorneys of the Environmental Protection Agency, or the Attorney General may bring an action in the appropriate district court of the United States to restrain any violation of this subparagraph.

(D) The Administrator shall provide the committee such administrative support services as may be necessary to enable the committee to carry out its function under this subsection.

(f) REQUIRED ACTIONS.—Upon the receipt of—

(1) any ~~test data~~information required to be submitted under this Act [*15 U.S.C. §§ 2601* et seq.], or

(2) any other information available to the Administrator,

which indicates to the Administrator that there may be a reasonable basis to conclude that a chemical substance or mixture presents ~~or will present~~ a significant risk of serious or widespread harm to human beings ~~from cancer, gene mutations, or birth defects~~, the Administrator shall, within the 180-day period beginning on the date of the receipt of such ~~data or~~ information, initiate ~~appropriate~~applicable action under section 5, 6, or 7 [*15 U.S.C. § 2604*, *2605*, or *2606*] to prevent or reduce to a sufficient extent such risk or publish in the Federal Register a finding made without consideration of costs or other nonrisk factors that such risk is not unreasonable. For good cause shown the Administrator may extend such period for an additional period of not more than 90 days. The Administrator shall publish in the Federal Register notice of any such extension and the reasons therefor. A finding by the Administrator that a risk is not unreasonable shall be considered agency action for purposes of judicial review under chapter 7 of title 5, United States Code [*5 U.S.C. §§ 701* et seq.]. This subsection shall not take effect until two years after the effective date of this Act [*15 U.S.C. § 2601* effective date note].

(g) PETITION FOR ~~STANDARDS~~PROTOCOLS AND METHODOLOGIES FOR THE DEVELOPMENT OF ~~TEST DATA~~INFORMATION.—A person intending to manufacture or process a chemical substance for which notice is required under section 5(a) [*15 U.S.C. § 2604(a)*] and who is not required under a rule, order, or consent agreement under subsection (a) to conduct tests and submit ~~data~~information on such substance may petition the Administrator to prescribe standards for the development of ~~test data~~information for such substance. The Administrator shall by order either grant or deny any such petition within 60 days of its receipt. If the petition is granted, the Administrator shall prescribe such standards for such substance within 75 days of the date the petition is granted. If the petition is denied, the Administrator shall publish, subject to section 14 [*15 U.S.C. § 2613*], in the Federal Register the reasons for such denial.

(h) REDUCTION OF TESTING ON VERTEBRATES.—

(1) IN GENERAL.—The Administrator shall reduce and replace, to the extent practicable, scientifically justified, and consistent with the policies of this title, the use of vertebrate animals in the testing of chemical substances or mixtures under this title by—

(A) prior to making a request or adopting a requirement for testing using vertebrate animals, and in accordance with subsection (a)(3), taking into consideration, as appropriate and to the extent practicable and scientifically justified, reasonably available existing information, including—

(i) toxicity information;

(ii) computational toxicology and bioinformatics; and

(iii) high-throughput screening methods and the prediction models of those methods; and

(B) encouraging and facilitating—

(i) the use of scientifically valid test methods and strategies that reduce or re place the use of vertebrate animals while providing information of equivalent or better scientific quality and relevance that will support regulatory decisions under this title;

(ii) the grouping of 2 or more chemical substances into scientifically appropriate categories in cases in which testing of a chemical substance would provide scientifically valid and useful information on other chemical substances in the category; and

(iii) the formation of industry consortia to jointly conduct testing to avoid unnecessary duplication of tests, provided that such consortia make all information from such testing available to the Administrator.

(2) IMPLEMENTATION OF ALTERNATIVE TESTING METHODS.—To promote the development and timely incorporation of new scientifically valid test methods and strategies that are not based on vertebrate animals, the Administrator shall—

(A) not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, develop a strategic plan to promote the development and implementation of alternative test methods and strategies to reduce, refine, or replace vertebrate animal testing and provide information of equivalent or better scientific quality and relevance for assessing risks of injury to health or the environment of chemical substances or mixtures through, for example—

(i) computational toxicology and bioinformatics;

(ii) high-throughput screening methods;

(iii) testing of categories of chemical substances;

(iv) tiered testing methods;

(v) in vitro studies;

(vi) systems biology;

(vii) new or revised methods identified by validation bodies such as the Interagency Coordinating Committee on the Validation of Alternative Methods or the Organization for Economic Cooperation and Development; or

(viii) industry consortia that develop information submitted under this title;

(B) as practicable, ensure that the strategic plan developed under subparagraph (A) is reflected in the development of requirements for testing under this section;

(C) include in the strategic plan developed under subparagraph (A) a list, which the Administrator shall update on a regular basis, of particular alternative test methods or strategies the Administrator has identified that do not require new vertebrate animal testing and are scientifically reliable, relevant, and capable of providing information of equivalent or

better scientific reliability and quality to that which would be obtained from vertebrate animal testing;

(D) provide an opportunity for public notice and comment on the contents of the plan developed under subparagraph (A), including the criteria for considering scientific reliability and relevance of the test methods and strategies that may be identified pursuant to subparagraph (C);

(E) beginning on the date that is 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and every 5 years thereafter, submit to Congress a report that describes the progress made in implementing the plan developed under subparagraph (A) and goals for future alternative test methods and strategies implementation; and

(F) prioritize and, to the extent consistent with available resources and the Administrator's other responsibilities under this title, carry out performance assessment, validation, and translational studies to accelerate the development of scientifically valid test methods and strategies that reduce, refine, or replace the use of vertebrate animals, including minimizing duplication, in any testing under this title.

(3) VOLUNTARY TESTING.—

(A) IN GENERAL.—Any person developing information for submission under this title on a voluntary basis and not pursuant to any request or requirement by the Administrator shall first attempt to develop the information by means of an alternative test method or strategy identified by the Administrator pursuant to paragraph (2)(C), if the Administrator has identified such a test method or strategy for the development of such information, before conducting new vertebrate animal testing.

(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph shall, under any circumstance, limit or restrict the submission of any existing information to the Administrator.

(C) RELATIONSHIP TO OTHER LAW.—A violation of this paragraph shall not be a prohibited act under section 15.

(D) REVIEW OF MEANS.—This paragraph authorizes, but does not require, the Administrator to review the means by which a person conducted testing described in subparagraph 2 (A).

SEC. 5 [§ 2604]. MANUFACTURING AND PROCESSING NOTICES

(a) IN GENERAL.—

(1) (A) Except as provided in subparagraph (B) of this paragraph and subsection (h), no person may—

(~~A~~i) manufacture a new chemical substance on or after the 30th day after the date on which the Administrator first publishes the list required by section 8(b) [*15 U.S.C. § 2607(b)*], or

(~~B~~ii) manufacture or process any chemical substance for a use which the Administrator has determined, in accordance with paragraph (2), is a significant new use~~,~~.

~~unless such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d), of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of subsection (b).~~

(B) A person may take the actions described in subparagraph (A) if—

(i) such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d), of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of, or imposed pursuant to, subsection (b), (e), or (f); and

(ii) the Administrator—

(I) conducts a review of the notice; and

(II) makes a determination under subparagraph (A), (B), or (C) of paragraph (3) and takes the actions required in association with that determination under such subparagraph within the applicable review period.

(3) REVIEW AND DETERMINATION.—Within the applicable review period, subject to section 18, the Administrator shall review such notice and determine—

(A) that the relevant chemical substance or significant new use presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, in which case the Administrator shall take the actions required under subsection (f);

(B) that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the relevant chemical substance or significant new use; or

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator; or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

in which case the Administrator shall take the actions required under subsection (e);

(C) that the relevant chemical substance or significant new use is likely not to present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, in which case the submitter of the notice may commence manufacture of the chemical substance or manufacture or processing for a significant new use; or

(4) FAILURE TO RENDER DETERMINATION.—

(A) FAILURE TO RENDER DETERMINATION.—If the Administrator fails to make a determination on a notice under paragraph (3) by the end of the applicable review period and the notice has not been withdrawn by the submitter, the Administrator shall refund to the submitter all applicable fees charged to the submitter for review of the notice pursuant to section 26(b), and the Administrator shall not be relieved of any requirement to make such determination.

(B) LIMITATIONS.—(i) A refund of applicable fees under subparagraph (A) shall not be made if the Administrator certifies that the submitter has not provided information required under subsection (b) or has otherwise unduly delayed the process such that the Administrator is unable to render a determination within the applicable review period.

(ii) A failure of the Administrator to render a decision shall not be deemed to constitute a withdrawal of the notice.

(iii) Nothing in this paragraph shall be construed as relieving the Administrator or the submitter of the notice from any requirement of this section.

(5) ARTICLE CONSIDERATION.—The Administrator may require notification under this section for the import or processing of a chemical substance as part of an article or category of articles under paragraph (1)(A)(ii) if the Administrator makes an affirmative finding in a rule under paragraph (2) that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule justifies notification.

(2) A determination by the Administrator that a use of a chemical substance is a significant new use with respect to which notification is required under paragraph (1) shall be made by a rule promulgated after a consideration of all relevant factors, including—

(A) the projected volume of manufacturing and processing of a chemical substance,

(B) the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance,

(C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and

(D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

(b) SUBMISSION OF ~~TEST DATA~~INFORMATION.—

(1) (A) If (i) a person is required by subsection (a)(1) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance, and (ii) such person is required to submit ~~test data~~information for such substance pursuant to a rule, order, or consent agreement ~~promulgated~~ under section 4 [*15 U.S.C. § 2603*] before the submission of such notice, such person shall submit to the Administrator such ~~data~~ information in accordance with such rule, order, or consent agreement at the time notice is submitted in accordance with subsection (a)(1).

(B) If—

(i) a person is required by subsection (a)(1) to submit a notice to the Administrator, and

(ii) such person has been granted an exemption under section 4(c) [*15 U.S.C. § 2603(c)*] from the requirements of a rule or order ~~promulgated~~ under section 4 [*15 U.S.C. § 2603*] before the submission of such notice,

such person may not, before the expiration of the 90 day period which begins on the date of the submission in accordance with such rule of the ~~test data~~information the submission or development of which was the basis for the exemption, manufacture such substance if such person is subject to subsection (a)(1)(A)(i) or manufacture or process such substance for a significant new use if the person is subject to subsection (a)(1)(~~B~~A)(ii).

(2) (A) If a person—

(i) is required by subsection (a)(1) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance listed under paragraph (4), and

(ii) is not required by a rule, order, or consent agreement ~~promulgated~~ under section 4 [*15 U.S.C. § 2603*] before the submission of such notice to submit ~~test data~~information for such substance,

such person ~~shall~~may submit to the Administrator ~~data~~ information prescribed by subparagraph (B) at the time notice is submitted in accordance with subsection (a)(1).

(B) ~~Data~~Information submitted pursuant to subparagraph (A) shall be ~~data~~ information which the person submitting the ~~data~~ information believes shows that—

(i) in the case of a substance with respect to which notice is required under subsection (a)(1)(A)(i), the manufacture, processing, distribution in commerce, use, and disposal of the chemical substance or any combination of such activities will not present an unreasonable risk of injury to health or the environment, or

(ii) in the case of a chemical substance with respect to which notice is required under subsection (a)(1)(~~B~~A)(ii), the intended significant new use of the chemical substance will not present an unreasonable risk of injury to health or the environment.

(3) ~~Data~~ Information submitted under paragraph (1) or (2) of this subsection or under subsection (e) shall be made available, subject to section 14 [*15 U.S.C. § 2613*], for examination by interested persons.

(4) (A) (i) The Administrator may, by rule, compile and keep current a list of chemical substances with respect to which the Administrator finds that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities, presents or may present an unreasonable risk of injury to health or the environment without consideration of costs or other nonrisk factors.

(ii) In making a finding under clause (i) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or any combination of such activities presents or may present an unreasonable risk of injury to health or the environment, the Administrator shall consider all relevant factors, including—

(I) the effects of the chemical substance on health and the magnitude of human exposure to such substance; and

(II) the effects of the chemical substance on the environment and the magnitude of environmental exposure to such substance.

(B) The Administrator shall, in prescribing a rule under subparagraph (A) which lists any chemical substance, identify those uses, if any, which the Administrator determines, by rule under subsection (a)(2), would constitute a significant new use of such substance.

(C) Any rule under subparagraph (A), and any substantive amendment or repeal of such a rule, shall be promulgated pursuant to the procedures specified in *section 553 of title 5, United States Code*, ~~except that (i) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions, (ii) a transcript shall be kept of any oral presentation, and (iii) the Administrator shall make and publish with the rule the finding described in~~ subparagraph (A).

(c) EXTENSION OF ~~NOTICE~~ REVIEW PERIOD.—The Administrator may for good cause extend for additional periods (not to exceed in the aggregate 90 days) the period, prescribed by subsection (a) or (b) ~~before which the manufacturing or processing of a chemical substance subject to such subsection may begin~~. Subject to section 14 [*15 U.S.C. § 2613*], such an extension and the reasons therefor shall be published in the Federal Register and shall constitute a final agency action subject to judicial review.

(d) CONTENT OF NOTICE; PUBLICATIONS IN THE FEDERAL REGISTER.—

(1) The notice required by subsection (a) shall include—

(A) insofar as known to the person submitting the notice or insofar as reasonably ascertainable, the information described in subparagraphs (A), (B), (C), (D), (F), and (G) of section 8(a)(2) [*15 U.S.C. § 2607(a)(2)(A)*-(D), (F), and (G)], and

(B) in such form and manner as the Administrator may prescribe, any ~~test data~~information in the possession or control of the person giving such notice which are related to the effect of any manufacture, processing, distribution in commerce, use, or disposal of such substance or any article containing such substance, or of any combination of such activities, on health or the environment, and

(C) a description of any other ~~data~~ information concerning the environmental and health effects of such substance, insofar as known to the person making the notice or insofar as reasonably ascertainable.

Such a notice shall be made available, subject to section 14 [*15 U.S.C. § 2613*], for examination by interested persons.

(2) Subject to section 14 [*15 U.S.C. § 2613*], not later than five days (excluding Saturdays, Sundays and legal holidays) after the date of the receipt of a notice under subsection (a) or of data under subsection (b), the Administrator shall publish in the Federal Register a notice which—

(A) identifies the chemical substance for which notice or ~~data~~ information has been received;

(B) lists the uses ~~or intended uses~~ of such substance identified in the notice; and

(C) in the case of the receipt of ~~data~~ information under subsection (b), describes the nature of the tests performed on such substance and any ~~data~~ information which was developed pursuant to subsection (b) or a rule, order, or consent agreement under section 4 [*15 U.S.C. § 2603*].

A notice under this paragraph respecting a chemical substance shall identify the chemical substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(3) At the beginning of each month the Administrator shall publish a list in the Federal Register of

(A) each chemical substance for which notice has been received under subsection (a) and for which the ~~notification~~ applicable review period ~~prescribed by subsection (a), (b), or (c)~~ has not expired, and

(B) each chemical substance for which such ~~notification~~ period has expired since the last publication in the Federal Register of such list.

(e) REGULATION PENDING DEVELOPMENT OF INFORMATION.—

(1)(A) If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a); ~~and~~or

(ii) (I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed subpopulation identified as relevant by the Administrator under the conditions of use;~~,~~ or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

the Administrator ~~may~~ shall issue ~~a proposed~~an order, to take effect on the expiration of the ~~notification period applicable to the manufacturing or processing of such substance under subsection (a), (b), or (c)~~applicable review period, to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, and the submitter of the notice may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, including while any required information is being developed, only in compliance with the order.

(B) ~~A proposed~~An order may not be issued under subparagraph (A) respecting a chemical substance (i) later than 45 days before the expiration of the ~~notification period applicable to the manufacture or processing of such substance under subsection (a), (b), or (c)~~applicable review period, and (ii) unless the Administrator has, on or before the issuance of the ~~proposed~~ order, notified, in writing, each manufacturer or processor, as the case may be, of such substance of the determination which underlies such order.

~~(C) If a manufacturer or processor of a chemical substance to be subject to a proposed order issued under subparagraph (A) files with the Administrator (within the 30-day period beginning on the date such manufacturer or processor received the notice required by subparagraph (B)(ii)) objections specifying with particularity the provisions of the order deemed objectionable and stating the grounds therefor, the proposed order shall not take effect.~~

~~(2) (A) (i) Except as provided in clause (ii), if with respect to a chemical substance with respect to which notice is required by subsection (a), the Administrator makes the determination described in paragraph (1)(A) and if—~~

~~(I) the Administrator does not issue a proposed order under paragraph (1) respecting such substance, or~~

(II) the Administrator issues such an order respecting such substance but such order does not take effect because objections were filed under paragraph (1)(C) with respect to it, the Administrator, through attorneys of the Environmental Protection Agency, shall apply to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer or processor, as the case may be, of such substance is found, resides, or transacts business for an injunction to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance (or to prohibit or limit any combination of such activities).

(ii) If the Administrator issues a proposed order under paragraph (1)(A) respecting a chemical substance but such order does not take effect because objections have been filed under paragraph (1)(C) with respect to it, the Administrator is not required to apply for an injunction under clause (i) respecting such substance if the Administrator determines, on the basis of such objections, that the determinations under paragraph (1)(A) may not be made.

(B) A district court of the United States which receives an application under subparagraph (A)(i) for an injunction respecting a chemical substance shall issue such injunction if the court finds that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a); and

(ii) (I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance.

(C) Pending the completion of a proceeding for the issuance of an injunction under subparagraph (B) respecting a chemical substance, the court may, upon application of the Administrator made through attorneys of the Environmental Protection Agency, issue a temporary restraining order or a preliminary injunction to prohibit the manufacture, processing, distribution in commerce, use, or disposal of such a substance (or any combination of such activities) if the court finds that the notification period applicable under subsection (a), (b), or (c) to the manufacturing or processing of such substance may expire before such proceeding can be completed.

(D) After the submission to the Administrator of test data sufficient to evaluate the health and environmental effects of a chemical substance subject to an injunction issued under subparagraph (B) and the evaluation of such data by the Administrator, the district court of the United States which issued such injunction shall, upon petition, dissolve the injunction unless the Administrator has initiated a proceeding for the issuance of a rule under section 6(a) [*15 U.S.C. § 2605(a)*] respecting the substance. If such a proceeding has been initiated, such court shall continue the injunction in effect until the effective date of the rule promulgated in such proceeding or, if such proceeding is terminated without the promulgation of a rule, upon the termination of the proceeding, whichever occurs first.

(f) PROTECTION AGAINST UNREASONABLE RISKS.—

(1) If the Administrator ~~finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance~~determines that a chemical substance or significant new use with respect to which notice is required by subsection (a), ~~or that any combination of such activities,~~ presents or will present an unreasonable risk of injury to health or environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed subpopulation identified as relevant by the Administrator under the conditions of use, ~~before a rule promulgated under section 6 [*15 U.S.C. § 2605*] can protect against such risk,~~ the Administrator shall, before the expiration of the ~~notification period applicable under subsection (a), (b), or (c) to the manufacturing or processing of such substance~~applicable review period, take the action authorized by paragraph (2) or (3) to the extent necessary to protect against such risk.

(2) The Administrator may issue a proposed rule under section 6(a) [*15 U.S.C. § 2605(a)*] to apply to a chemical substance with respect to which a finding was made under paragraph (1)—

(A) a requirement limiting the amount of such substance which may be manufactured, processed, or distributed in commerce,

(B) a requirement described in paragraph (2), (3), (4), (5), (6), or (7) of section 6(a) [*15 U.S.C. § 2605(a)(2)*, (3), (4), (5), (6), or (7)], or

(C) any combination of the requirements referred to in subparagraph (B).

Such a proposed rule shall be effective upon its publication in the Federal Register. Section 6(d)(~~2~~3)(B) [*15 U.S.C. § 2605(d)(2)(B)*] shall apply with respect to such rule.

(3) (A) The Administrator may—

(i) issue an ~~proposed~~ order to prohibit or limit the manufacture, processing, or distribution in commerce of a substance with respect to which a finding was made ~~under paragraph (1), or~~under paragraph (1). Such order shall take effect on the expiration of the applicable review period.

~~(ii) apply, through attorneys of the Environmental Protection Agency, to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer, or processor, as the case may be, of such substance, is found, resides, or transacts business for an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance.~~

~~A proposed order issued under clause (i) respecting a chemical substance shall take effect on the expiration of the notification period applicable under subsection (a), (b), or (c) to the manufacture or processing of such substance.~~

~~(B) If the district court of the United States to which an application has been made under subparagraph (A)(ii) finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance with respect to which such application was made, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment before a rule promulgated under section 6 [*15 U.S.C. § 2605*] can protect against such risk, the court shall issue an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance or to prohibit any combination of such activities.~~

(~~C~~B) The provisions of subparagraphs (B) ~~and (C)~~ of subsection (e)(1) shall apply with respect to an order issued under ~~clause (i) of~~ subparagraph (A)~~; and the provisions of subparagraph (C) of subsection (e)(2) shall apply with respect to an injunction issued under subparagraph (B).~~

~~(D) If the Administrator issues an order pursuant to subparagraph (A)(i) respecting a chemical substance and objections are filed in accordance with subsection (e)(1)(C), the Administrator shall seek an injunction under subparagraph (A)(ii) respecting such substance unless the Administrator determines, on the basis of such objections, that such substance does not or will not present an unreasonable risk of injury to health or the environment~~.

(4) TREATMENT OF NONCONFORMING USES.— Not later than 90 days after taking an action under paragraph (2) or (3) or issuing an order under subsection (e) relating to a chemical substance with respect to which the Administrator has made a determination under subsection (a)(3)(A) or (B), the Administrator shall consider whether to promulgate a rule pursuant to subsection (a)(2) that identifies as a significant new use any manufacturing, processing, use, distribution in commerce, or disposal of the chemical substance that does not conform to the restrictions imposed by the action or order, and, as applicable, initiate such a rulemaking or publish a statement describing the reasons of the Administrator for not initiating such a rulemaking.

(5) WORKPLACE EXPOSURES.—To the extent practicable, the Administrator shall consult with the Assistant Secretary of Labor for Occupational Safety and Health prior to adopting any prohibition or other restriction relating to a chemical substance with respect to which the Administrator has made a determination under subsection (a)(3)(A) or (B) to address workplace exposures.

~~(g) STATEMENT OF REASONS FOR NOT TAKING ACTION.—If the Administrator has not initiated any action under this section or section 6 or 7 [*15 U.S.C. § 2605* or *2606*] to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, with respect to which notification or data is required by subsection (a)(1)(B) or (b), before the expiration of the notification period applicable to the manufacturing or processing of such substance, the Administrator shall publish a statement of the Administrator's reasons for not initiating such action. Such a statement shall be published in the Federal Register before the expiration of such period. Publication of such statement in accordance with the preceding sentence is not a prerequisite to the manufacturing or processing of the substance with respect to which the statement is to be published.~~

(g) STATEMENT ON ADMINISTRATOR FINDING.—If the Administrator finds in accordance with subsection (a)(3)(C) that a chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment, is a low-hazard substance, then notwithstanding any remaining portion of the applicable review period, the submitter of the notice may commence manufacture of the chemical substance or manufacture or processing for the significant new use, and the Administrator shall make public a statement of the Administrator's finding. Such a statement shall be submitted for publication in the Federal Register as soon as is practicable before the expiration of such period. Publication of such statement in accordance with the preceding sentence is not a prerequisite to the manufacturing or

processing of the substance with respect to which the statement is to be published.

(h) EXEMPTIONS.—

(1) The Administrator may, upon application, exempt any person from any requirement of subsection (a) or (b) to permit such person to manufacture or process a chemical substance for test marketing purposes—

(A) upon a showing by such person satisfactory to the Administrator that the manufacture, processing, distribution in commerce, use, and disposal of such substance, and that any combination of such activities, for such purposes will not present any unreasonable risk of injury to health or the environment, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator for the specific conditions of use identified in the application, and

(B) under such restrictions as the Administrator considers appropriate.

(2) (A) The Administrator may, upon application, exempt any person from the requirement of subsection (b)(2) to submit ~~data~~ information for a chemical substance. If, upon receipt of an application under the preceding sentence, the Administrator determines that—

(i) the chemical substance with respect to which such application was submitted is equivalent to a chemical substance for which ~~data~~ information has been submitted to the Administrator as required by subsection (b)(2), and

(ii) submission of ~~data~~ information by the applicant on such substance would be duplicative of data which has been submitted to the Administrator in accordance with such subsection,

the Administrator shall exempt the applicant from the requirement to submit such ~~data~~ information on such substance. No exemption which is granted under this subparagraph with respect to the submission of ~~data~~ information for a chemical substance may take effect before the beginning of the reimbursement period applicable to such ~~data~~information.

(B) If the Administrator exempts any person, under subparagraph (A), from submitting ~~data~~ information required under subsection (b)(2) for a chemical substance because of the existence of previously submitted ~~data~~ information and if such exemption is granted during the reimbursement period for such ~~data~~ information, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator) —

(i) to the person who previously submitted the ~~data~~ information on which the exemption was based, for a portion of the costs incurred by such person in complying with the requirement under subsection (b)(2) to submit such ~~data~~information, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the persons to be reimbursed and the share of the market for such substance of the person required to provide reimbursement in relation to the share of such market of the persons to be

reimbursed. For purposes of judicial review, an order under this subparagraph shall be considered final agency action.

(C) For purposes of this paragraph, the reimbursement period for any previously submitted data for a chemical substance is a period—

(i) beginning on the date of the termination of the prohibition, imposed under this section, on the manufacture or processing of such substance by the person who submitted such ~~data~~ information to the Administrator, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and is equal to the period which the Administrator determines was necessary to develop such ~~data~~ information,

whichever is later.

(3) The requirements of subsections (a) and (b) do not apply with respect to the manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for purposes of—

(A) scientific experimentation or analysis, or

(B) chemical research on, or analysis of such substance or another substance, including such research or analysis for the development of a product,

if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer, processor, or the Administrator has reason to believe may be associated with such chemical substance.

(4) The Administrator may, upon application and by rule, exempt the manufacturer of any new chemical substance from all or part of the requirements of this section if the Administrator determines that the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance, or that any combination of such activities, will not present an unreasonable risk of injury to health or the environment, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator under the conditions of use. ~~A rule promulgated under this paragraph (and any substantive amendment to, or repeal of, such a rule) shall be promulgated in accordance with paragraphs (2) and (3) of section 6(c) [*15 U.S.C. § 2605(c)(2)* and (3)].~~

(5) The Administrator may, upon application, make the requirements of subsections (a) and (b) inapplicable with respect to the manufacturing or processing of any chemical substance

(A) which exists temporarily as a result of a chemical reaction in the manufacturing or processing of a mixture or another chemical substance, and

(B) to which there is no, and will not be, human or environmental exposure.

(6) Immediately upon receipt of an application under paragraph (1) or (5) the Administrator shall publish in the Federal Register notice of the receipt of such application. The Administrator shall give interested persons an opportunity to comment upon any such application and shall,

within 45 days of its receipt, either approve or deny the application. The Administrator shall publish in the Federal Register notice of the approval or denial of such an application.

~~(i) DEFINITION.—For purposes of this section, the terms "manufacture" and "process" mean manufacturing or processing for commercial purposes.~~
(i) DEFINITIONS.—(1) For purposes of this section, the terms 'manufacture' and 'process' mean manufacturing or processing for commercial purposes.

(2) For purposes of this Act, the term 'requirement' as used in this section shall not displace any statutory or common law.

(3) For purposes of this section, the term 'applicable review period' means the period starting on the date the Administrator receives a notice under subsection (a)(1) and ending 90 days after that date, or on such date as is provided for in subsection (b)(1) or (c).

SEC. 6 [§ 2605]. ~~REGULATION OF HAZARDOUS CHEMICAL SUBSTANCES AND MIXTURES~~ PRIORITIZATION, RISK EVALUATION, AND REGULATION OF CHEMICAL SUBSTANCES AND MIXTURES

(a) SCOPE OF REGULATION.—If the Administrator ~~finds that there is a reasonable basis to conclude~~ determines in accordance with subsection (b)(4)(A) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents ~~or will present~~ an unreasonable risk of injury to health or the environment, the Administrator shall by rule and subject to section 18, and in accordance with subsection (c)(2) apply one or more of the following requirements to such substance or mixture to the extent necessary ~~to protect adequately against such risk using the least burdensome requirements~~ so that the chemical substance or mixture no longer presents such risk:

(1) A requirement (A) prohibiting or otherwise restricting the manufacturing, processing, or distribution in commerce of such substance or mixture, or (B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce.

(2) A requirement—
(A) prohibiting or otherwise restricting the manufacture, processing, or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or
(B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement.

(3) A requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate minimum warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any

combination of such activities. The form and content of such minimum warnings and instructions shall be prescribed by the Administrator.

(4) A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture ~~and~~ or monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection.

(5) A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture.

(6) (A) A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of, it for commercial purposes.
(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law or requirement of, or in effect for, a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such disposal.

(7) A requirement directing manufacturers or processors of such substance or mixture (A) to give notice of such ~~unreasonable risk of injury~~ determination to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (B) to give public notice of such ~~risk of injury~~determination, and (C) to replace or repurchase such substance or mixture as elected by the person to which the requirement is directed.

Any requirement (or combination of requirements) imposed under this subsection may be limited in application to specified geographic areas.

~~(b) QUALITY CONTROL.—If the Administrator has a reasonable basis to conclude that a particular manufacturer or processor is manufacturing or processing a chemical substance or mixture in a manner which unintentionally causes the chemical substance or mixture to present or which will cause it to present an unreasonable risk of injury to health or the environment—~~

~~—(1) the Administrator may by order require such manufacturer or processor to submit a description of the relevant quality control procedures followed in the manufacturing or processing of such chemical substance or mixture; and~~

~~—(2) if the Administrator determines—~~

~~—(A) that such quality control procedures are inadequate to prevent the chemical substance or mixture from presenting such risk of injury, the Administrator may order the manufacturer or processor to revise such quality control procedures to the extent necessary to remedy such inadequacy; or~~

~~(B) that the use of such quality control procedures has resulted in the distribution in commerce of chemical substances or mixtures which present an unreasonable risk of injury to health or the environment, the Administrator may order the manufacturer or processor to (i) give notice of such risk to processors or distributors in commerce of any such substance or mixture, or to both, and, to the extent reasonably ascertainable, to any other person in possession of or exposed to any such substance, (ii) to give public notice of such risk, and (iii) to provide such replacement or repurchase of any such substance or mixture as is necessary to adequately protect health or the environment.~~

~~A determination under subparagraph (A) or (B) of paragraph (2) shall be made on the record after opportunity for hearing in accordance with *section 554 of title 5, United States Code*. Any manufacturer or processor subject to a requirement to replace or repurchase a chemical substance or mixture may elect either to replace or repurchase the substance or mixture and shall take either such action in the manner prescribed by the Administrator.~~

~~(b)~~ (b) RISK EVALUATIONS.—(1) PRIORITIZATION FOR RISK EVALUATIONS.—

(A) ESTABLISHMENT OF PROCESS.—Not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall establish, by rule, a risk-based screening process, including criteria for designating chemical substances as high-priority substances for risk evaluations or low-priority substances for which risk evaluations are not warranted at the time. The process to designate the priority of chemical substances shall include a consideration of the hazard and exposure potential of a chemical substance or a category of chemical substances(including consideration of persistence and bioaccumulation, potentially exposed or susceptible subpopulations and storage near significant sources of drinking water), the conditions of user significant changes in the conditions of use of the chemical substance, and the volume or significant changes in the volume of the chemical substance manufactured or processed.

(B) IDENTIFICATION OF PRIORITIES FOR RISK EVALUATION.—

(i) HIGH-PRIORITY SUBSTANCES.—

The Administrator shall designate as high-priority substance a chemical substance that the Administrator concludes, without consideration of costs or other nonrisk factors, may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator.

(ii) LOW-PRIORITY SUBSTANCES.—

The Administrator shall designate a chemical substance as a low-priority substance if the Administrator concludes, based on information sufficient to establish, without consideration of costs or other nonrisk factors, that such substance does not meet the standard identified in clause (i) for designating a chemical substance a high-priority substance.

(C) INFORMATION REQUEST AND REVIEW AND PROPOSED AND FINAL PRIORITIZATION DESIGNATION.—

The rulemaking required in subparagraph (A) shall ensure that the time required to make a priority designation of alchemical substance be no shorter than nine months and no longer than 1 year, and that the process for such designations includes—

(i) a requirement that the Administrator request interested persons to submit relevant information on a chemical substance that the Administrator has initiated the prioritization process on, before proposing a priority designation for the chemical substance, and provide 90 days for such information to be provided;

(ii) a requirement that the Administrator publish each proposed designation oaf chemical substance as a high- or low-priority substance, along with an identification of the information, analysis, and basis used to make the proposed designations, and provide 90 days for public comment on each such proposed designation; and

(iii) a process by which the Administrator may extend the deadline in clause(i) for up to three months in order to receive or evaluate information required to be submitted in accordance with section 4(a)(2)(B), subject to the limitation that if the information available to the Administrator at the end of such an extension remains insufficient to enable the designation of the chemical substance as a low-priority substance, the Administrator shall designate the chemical substance as high-priority substance.

(2) INITIAL RISK EVALUATIONS AND SUBSEQUENT DESIGNATIONS OF HIGH- AND LOW-PRIORITY SUBSTANCES.—

(A) INITIAL RISK EVALUATIONS.—Not later than 180 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall ensure that risk evaluations are being conducted on 10 chemical substances drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments and shall publish the list of such chemical substances during the 180 day period.

(B) ADDITIONAL RISK EVALUATIONS.—Not later than three and one half years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall ensure that risk evaluations are being conducted on at least 20 high priority substances and that at least 20 chemical substances have been designated as low-priority or low-hazard substances, subject to the limitation that at least 50 percent of all chemical substances on which risk evaluations are being conducted by the Administrator are drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments.

(C) CONTINUING DESIGNATIONS AND RISK EVALUATIONS.—The Administrator shall continue to designate priority substances and conduct risk evaluations in accordance with this subsection at a pace consistent with the ability of the Administrator to complete risk evaluations in accordance with the deadlines under paragraph (4)(G).

(D) PREFERENCE.—In designating high-priority substances, the Administrator shall give preference to—

(i) chemical substances that are listed in the 2014 update of the TSCA Work Plan for Chemical Assessments as having persistence and Bioaccumulation Score of; and

(ii) chemical substances that are listed in the 2014 update of the TSCA Work Plan for Chemical Assessments that are known human carcinogens and have high acute and chronic toxicity.

(E) METALS AND METAL COMPOUNDS.—In identifying priorities for risk evaluation and conducting risk evaluations of metals and metal compounds, the Administrator shall use the Framework for Metals Risk Assessment of the Office of the Science Advisor, Risk Assessment Forum, and dated March 2007, or a successor document that addresses metals risk assessment and is peer reviewed by the Science Advisory Board.

(3) INITIATION OF RISK EVALUATIONS; DESIGNATIONS.—

(A) RISK EVALUATION INITIATION.—Upon designating a chemical substance as high-priority substance, the Administrator shall initiate a risk evaluation on the substance.

(B) REVISION.—The Administrator may revise the designation of a low-priority substance based on information made available to the Administrator.

(C) ONGOING DESIGNATIONS.—The Administrator shall designate at least one high priority substance upon the completion of each risk evaluation (other than risk evaluations for chemical substances designated under pare graph (4)(C)(ii)).

(4) RISK EVALUATION PROCESS AND DEAD-LINES.—

(A) IN GENERAL.—The Administrator shall conduct risk evaluations pursuant to this paragraph to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other no risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.

(B) ESTABLISHMENT OF PROCESS.—Not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall establish, by rule, a process to conduct risk evaluations in accordance with subparagraph 9 (A).

(C) REQUIREMENT.—The Administrator shall conduct and publish risk evaluations, in accordance with the rule promulgated under subparagraph (B), for a chemical substance—
(i) that has been identified under paragraph (2)(A) or designated under paragraph (1)(B)(i); and

(ii) subject to subparagraph (E),that a manufacturer of the chemical substance has requested, in a form and manner and using the criteria prescribed by the Administrator in the rule promulgated under subparagraph (B), be subjected to a risk evaluation.

(D) SCOPE.—The Administrator shall, not later than 6 months after the initiation of a risk evaluation, publish the scope of the risk evaluation to be conducted, including the hazards,

exposures, conditions of use, and the potentially exposed or susceptible subpopulations the Administrator expects to consider, and, for each designation of a high-priority substance, ensure not less than 12 months between the initiation of the prioritization process for the chemical substance and the publication of the scope of the risk evaluation for the chemical substance, and for risk evaluations conducted on chemical substances that have been identified under paragraph (2)(A) or selected under subparagraph (E)(iv)(II) of this paragraph, ensure not less than 3 months before the Administrator publishes the scope of the risk evaluation.

(E) LIMITATION AND CRITERIA.—

(i) PERCENTAGE REQUIREMENTS.—The Administrator shall ensure that, of the number of chemical substances that undergo a risk evaluation under clause (i) of subparagraph (C), the number of chemical substances undergoing a risk evaluation under clause (ii) of subparagraph (C) is—

(I) not less than 25 percent, insufficient requests are made under clause (ii) of subparagraph (C); and

(II) not more than 50 percent.

(ii) REQUESTED RISK EVALUATIONS.—Requests for risk evaluations under subparagraph (C)(ii) shall be subject to the payment of fees pursuant to section 26(b), and the Administrator shall not expedite or otherwise provide special treatment to such risk evaluations.

(iii) PREFERENCE.—In deciding whether to grant requests under subparagraph (C)(ii), the Administrator shall give preference to requests for risk evaluations on chemical substances for which the Administrator determines that restrictions imposed by 1 or more States have the potential to have a significant impact on interstate commerce or health or the environment.

(iv) EXCEPTIONS.—(I) Chemical substances for which requests have been granted under subparagraph (C)(ii) shall not be subject to section 18(b).

(II) Requests for risk evaluations on chemical substances which are made under subparagraph (C)(ii) and that are drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments shall be granted at the discretion of the Administrator and not be subject to clause (i)(II).

(F) REQUIREMENTS.—In conducting a risk evaluation under this subsection, the Administrator shall—

(i) integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on potentially exposed or susceptible subpopulations identified as relevant by the Administrator;

(ii) describe whether aggregate or sentinel exposures to a chemical substance under the conditions of use were considered, and the basis for that consideration;

(iii) not consider costs or other nonrisk factors;

(iv) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use of the chemical substance; and

(v) describe the weight of the scientific evidence for the identified hazard and exposure.

(G) DEADLINES.—The Administrator—

(i) shall complete a risk evaluation for a chemical substance as soon as practicable, but not later than 3 years after the date on which the Administrator initiates the risk evaluation under subparagraph(C); and

(ii) may extend the deadline for a risk evaluation for not more than 6 months.

(H) NOTICE AND COMMENT.—The Administrator shall provide no less than 30 days public notice and an opportunity for comment on a draft risk evaluation prior to publishing final risk evaluation.;

(c) PROMULGATION OF SUBSECTION (a) RULES.—

~~(1) In promulgating any rule under subsection (a) with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement with respect to—~~

~~(A) the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture,~~

~~(B) the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture,~~

~~(C) the benefits of such substance or mixture for various uses and the availability of substitutes for such uses, and~~

~~(D) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.~~

~~If the Administrator determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another Federal law (or laws) administered in whole or in part by the Administrator, the Administrator may not promulgate a rule under subsection (a) to protect against such risk of injury unless the Administrator finds, in the Administrator's discretion, that it is in the public interest to protect against such risk under this Act [*15 U.S.C. §§ 2601* et seq.]. In making such a finding the Administrator shall consider (i) all relevant aspects of the risk, as determined by the Administrator in the Administrator's discretion, (ii) a comparison of the estimated costs of complying with actions taken under this Act [*15 U.S.C. §§ 2601* et seq.] and under such law (or laws), and (iii) the relative efficiency of actions under this Act [*15 U.S.C. §§ 2601* et seq.] and under such law (or laws) to protect against such risk of injury.~~

~~(2) When prescribing a rule under subsection (a) the Administrator shall proceed in accordance with *section 553 of title 5, United States Code* (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with paragraph (3); (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in section 19(a) [*15 U.S.C. § 2618(a)*]), and (E) make and publish with the rule the finding described in subsection (a).~~

~~(3) Informal hearings required by paragraph (2)(C) shall be conducted by the Administrator in accordance with the following requirements:~~

~~(A) Subject to subparagraph (B), an interested person is entitled—~~

~~(i) to present such person's position orally or by documentary submissions (or both), and~~

~~(ii) if the Administrator determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B)(ii)) such cross-examination of persons as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to such issues.~~

~~(B) The Administrator may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. Such rules or rulings may include (i) the imposition of reasonable time limits on each interested person's oral presentations, and (ii) requirements that any cross-examination to which a person may be entitled under subparagraph (A) be conducted by the Administrator on behalf of that person in such manner as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to disputed issues of material fact.~~

~~(C) (i) Except as provided in clause (ii), if a group of persons each of whom under subparagraphs (A) and (B) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Administrator to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Administrator may make rules and rulings (I) limiting the representation of such interest for such purposes, and (II) governing the manner in which such cross-examination shall be limited.~~

~~(ii) When any person who is a member of a group with respect to which the Administrator has made a determination under clause (i) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of clause (i) the opportunity to conduct (or have conducted) cross-examination as to issues affecting the person's particular interests if (I) the person satisfies the Administrator that the person has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (II) the Administrator determines that there are substantial and relevant issues which are not adequately presented by the group representative.~~

~~(D) A verbatim transcript shall be taken of any oral presentation made, and cross-examination conducted in any informal hearing under this subsection. Such transcript shall be available to the public.~~

~~(4) (A) The Administrator may, pursuant to rules prescribed by the Administrator, provide compensation for reasonable attorneys' fees, expert witness fees, and other costs of participating in a rulemaking proceeding for the promulgation of a rule under subsection (a) to any person—~~

~~(i) who represents an interest which would substantially contribute to a fair determination of the issues to be resolved in the proceeding, and~~

~~(ii) if~~

~~(I) the economic interest of such person is small in comparison to the costs of effective participation in the proceeding by such person, or~~

~~(II) such person demonstrates to the satisfaction of the Administrator that such person does not have sufficient resources adequately to participate in the proceeding without compensation under this subparagraph.~~

~~In determining for purposes of clause (i) if an interest will substantially contribute to a fair determination of the issues to be resolved in a proceeding, the Administrator shall take into account the number and complexity of such issues and the extent to which representation of such interest will contribute to widespread public participation in the proceeding and representation of a fair balance of interests for the resolution of such issues.~~

~~(B) In determining whether compensation should be provided to a person under subparagraph (A) and the amount of such compensation, the Administrator shall take into account the financial burden which will be incurred by such person in participating in the rulemaking proceeding. The Administrator shall take such action as may be necessary to ensure that the aggregate amount of compensation paid under this paragraph in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either—~~

~~(i) would be regulated by the proposed rule, or~~

~~(ii) represent persons who would be so regulated,~~

~~may not exceed 25 per centum of the aggregate amount paid as compensation under this paragraph to all persons in such fiscal year.~~

~~(5) Paragraph (1), (2), (3), and (4) of this subsection apply to the promulgation of a rule repealing, or making a substantive amendment to, a rule promulgated under subsection (a).~~

(1) DEADLINES.—If the Administrator determines that a chemical substance presents an unreasonable risk of injury to health or the environment in accordance with subsection (b)(4)(A), the Administrator—

(A) shall propose in the Federal Register a rule under subsection (a) for the chemical substance not later than 1 year after the date on which the final risk evaluation regarding the chemical substance is published;

(B) shall publish in the Federal Register a final rule not later than 2 years after the date on which the final risk evaluation regarding the chemical substance is published; and

(C) may extend the deadlines under this paragraph for not more than two years, subject to the condition that the aggregate length of extensions under this subparagraph and sub-section (b)(4)(G)(ii) does not exceed two years, and subject to the limitation that the Administrator may

not extend a deadline for the publication of a proposed or final rule regarding a chemical substance drawn from the 2014 up-date of the TSCA Work Plan for Chemical Assessments or a chemical substance that, with respect to persistence and bioaccumulation, scores high for 1 and either high or moderate for the other, pursuant to the TSCA Work Plan Chemicals Methods Document published by the Administrator in February 2012 (or a successor scoring system), without adequate public justification that demonstrates, following a review of the information reasonably available to the Administrator, that the Administrator cannot complete the proposed or final rule without additional information regarding the chemical substance.

(2) REQUIREMENTS FOR RULE.—

(A) STATEMENT OF EFFECTS.—In proposing and promulgating a rule under sub- section (a) with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement based on reasonably available information with respect to—

(i) the effects of the chemical substance or mixture on health and the magnitude of the exposure of human beings to the chemical substance or mixture;

(ii) the effects of the chemical substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture;

(iii) the benefits of the chemical substance or mixture for various uses; and

(iv) the reasonably ascertainable economic consequences of the rule, including consideration of—

(I) the likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health;

(II) the costs and benefits of the proposed and final regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator; and

(III) the cost effectiveness of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.

(B) SELECTING REQUIREMENTS.—In selecting among prohibitions and other restrictions, the Administrator shall factor in, to the extent practicable, the considerations under subparagraph (A) in accordance with subsection 6(a).

(C) CONSIDERATION OF ALTERNATIVES.—Based on the information published under subparagraph (A), in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use of a chemical substance or mixture, and in setting an appropriate transition period for such action, the Administrator shall consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment, compared to the use so proposed to be prohibited or restricted, will be reasonably available as a substitute when the proposed prohibition or other restriction takes effect.

(D) REPLACEMENT PARTS.—

(i) IN GENERAL.—The Administrator shall exempt replacement parts for complex durable goods and complex consumer goods that are designed prior to the date of publication in the Federal Register of the rule under subsection (a), unless the Administrator finds that such replacement parts contribute significantly to the risk, identified in a risk evaluation conducted under subsection (b)(4)(A), to the general population or to an identified potentially exposed or susceptible subpopulation.

(ii) DEFINITIONS.—In this subparagraph—

(I) the term 'complex consumer goods' means electronic or mechanical devices composed of multiple manufactured components, with an intended useful life of 3 or more years, where the product is typically not consumed, destroyed, or discarded after a single use, and the components of which would be impracticable to redesign or replace; and

(II) the term 'complex durable goods' means manufactured goods composed of 100 or more manufactured components, with an intended useful life of 5 or more years, where the product is typically not consumed, destroyed, or discarded after a single use.

(E) ARTICLES.—In selecting among prohibitions and other restrictions, the Administrator shall apply such prohibitions or other restrictions to an article or category of articles containing the chemical substance or mixture only to the extent necessary to address the identified risks from exposure to the chemical substance or mixture from the article or category of articles so that the substance or mixture does not present an unreasonable risk of injury to health or the environment identified in the risk evaluation conducted in accordance with subsection (b)(4)(A).

(3) PROCEDURES.—When prescribing a rule under subsection (a) the Administrator shall proceed in accordance with section 553 of title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), and shall also—

(A) publish a notice of proposed rule- making stating with particularity the reason for the proposed rule;

(B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available;

(C) promulgate a final rule based on the matter in the rulemaking record; and

(D) make and publish with the rule the determination described in subsection (a).

(~~D~~d) EFFECTIVE DATE.—

~~(1) The Administrator shall specify in any rule under subsection (a) the date on which it shall take effect, which date shall be as soon as feasible.~~

(1) IN GENERAL.—In any rule under subsection (a), the Administrator shall—

(A) specify the date on which it shall take effect, which date shall be as soon as practicable;

(B) except as provided in subparagraphs (C) and (D), specify mandatory compliance dates for all of the requirements under a rule under subsection (a), which shall be as soon as practicable, but not later than 5 years after the date of promulgation of the rule, except in a case of a use exempted under subsection (g);

(C) specify mandatory compliance dates for the start of ban or phase-out requirements under a rule under subsection (a), which shall be as soon as practicable, but not later than 5 years after the date of promulgation of the rule, except in the case of a use exempted under subsection (g);

(D) specify mandatory compliance dates for full implementation of ban or phase-out requirements under a rule under subsection (a), which shall be as soon as practicable; and

(E) provide for a reasonable transition period.

(2) VARIABILITY.—As determined by the Administrator, the compliance dates established under paragraph (1) may vary for different affected persons.; and

(~~2~~3) (A) The Administrator may declare a proposed rule under subsection (a) to be effective and compliance with the proposed requirements to be mandatory, upon publication in the Federal Register of the proposed rule and until the compliance dates applicable to such requirements in a final rule promulgated under section 6(a) or until the Administrator revokes such proposed rule, in accordance with subparagraph (B), if~~upon its publication in the Federal Register and until the effective date of final action taken, in accordance with subparagraph (B), respecting such rule if—~~

(i) the Administrator determines that—

(I) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date without consideration of costs or other non-risk factors; and

(II) making such proposed rule so effective is necessary to protect the public interest; and

(ii) in the case of a proposed rule to prohibit the manufacture, processing, or distribution of a chemical substance or mixture because of the risk determined under clause (i)(I), a court has in an action under section 7 [*15 U.S.C. § 2606*] granted relief with respect to such risk associated with such substance or mixture.

Such a proposed rule which is made so effective shall not, for purposes of judicial review, be considered final agency action.

(B) If the Administrator makes a proposed rule effective upon its publication in the Federal Register, the Administrator shall, as expeditiously as possible, give interested persons prompt notice of such action, in accordance with subsection (c), and either promulgate such rule (as proposed or with modifications) or revoke it. ~~provide reasonable opportunity, in accordance with paragraphs (2) and (3) of subsection (c), for a hearing on such rule, and either promulgate such rule (as proposed or with modifications) or revoke it; and if such a hearing is requested, the Administrator shall commence the hearing within five days from the date such request is made unless the Administrator and the person making the request agree upon a later date for the hearing to begin, and after the hearing is concluded the Administrator shall, within ten days of~~

~~the conclusion of the hearing, either promulgate such rule (as proposed or with modifications) or revoke it.~~

(e) POLYCHLORINATED BIPHENYLS.—

(1) Within six months after the effective date of this Act [*15 U.S.C. § 2601* effective date note] the Administrator shall promulgate rules to—

(A) prescribe methods for the disposal of polychlorinated biphenyls, and

(B) require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities.

Requirements prescribed by rules under this paragraph shall be consistent with the requirements of paragraphs (2) and (3).

(2) (A) Except as provided under subparagraph (B), effective one year after the effective date of this Act [*15 U.S.C. § 2601* effective date note] no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyl in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

(C) For the purposes of this paragraph, the term "totally enclosed manner" means any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule.

(3) (A) Except as provided in subparagraphs (B), (C), and (D)—

(i) no person may manufacture any polychlorinated biphenyl after two years after the effective date of this Act [*15 U.S.C. § 2601* effective date note], and

(ii) no person may process or distribute in commerce any polychlorinated biphenyl after two and one-half years after such date [*15 U.S.C. § 2601* effective date note].

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph (A), and the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) an unreasonable risk of injury to health or environment would not result, and

(ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period (but not more than 1 year from the date it is granted, except as provided in subparagraph (D)) as the Administrator may prescribe.

(C) Subparagraph (A) shall not apply to the distribution in commerce of any polychlorinated biphenyl if such polychlorinated biphenyl was sold for purposes other than resale before two and one half years after the date of enactment of this Act [enacted Oct. 11, 1976].
(D) The Administrator may extend an exemption granted pursuant to subparagraph (B) that has not yet expired for a period not to exceed 60 days for the purpose of authorizing the Secretary of Defense and the Secretaries of the military departments to provide for the transportation into the customs territory of the United States of polychlorinated biphenyls generated by or under the control of the Department of Defense for purposes of their disposal, treatment, or storage in the customs territory of the United States if those polychlorinated biphenyls are already in transit from their storage locations but the Administrator determines, in the sole discretion of the Administrator, they would not otherwise arrive in the customs territory of the United States within the period of the original exemption. The Administrator shall promptly publish notice of such extension in the Federal Register.

(4) Any rule under paragraph (1), (2)(B), or (3)(B) shall be promulgated in accordance with ~~paragraphs (2), (3), and (4)~~ paragraph (3) of subsection (c).

(5) This subsection does not limit the authority of the Administrator, under any other provision of this Act [*15 U.S.C. §§ 2601* et seq.] or any other Federal law, to take action respecting any polychlorinated biphenyl.

(f) MERCURY.—

(1) Prohibition on sale, distribution, or transfer of elemental mercury by federal agencies. Except as provided in paragraph (2), effective beginning on the date of enactment of this subsection [enacted Oct. 14, 2008], no Federal agency shall convey, sell, or distribute to any other Federal agency, any State or local government agency, or any private individual or entity any elemental mercury under the control or jurisdiction of the Federal agency.

(2) Exceptions. Paragraph (1) shall not apply to—
(A) a transfer between Federal agencies of elemental mercury for the sole purpose of facilitating storage of mercury to carry out this Act [*15 U.S.C. §§ 2601* et seq.]; or
(B) a conveyance, sale, distribution, or transfer of coal.

(3) Leases of Federal coal. Nothing in this subsection prohibits the leasing of coal.

(g) EXEMPTIONS.—

(1) CRITERIA FOR EXEMPTION.—The Administrator may, as part of a rule promulgated under subsection (a), or in a separate rule, grant an exemption from a requirement of a subsection (a) rule for a specific condition of use of a chemical substance or mixture, if the Administrator finds that—

(A) the specific condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure;

(B) compliance with the requirement, as applied with respect to the specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure; or

(C) the specific condition of use of the chemical substance or mixture, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.

(2) EXEMPTION ANALYSIS AND STATEMENT.— In proposing an exemption under this subsection, the Administrator shall analyze the need for the exemption, and shall make public the analysis and a statement describing how the analysis was taken into account.

(3) PERIOD OF EXEMPTION.—The Administrator shall establish, as part of a rule under this subsection, a time limit on any exemption for a time to be determined by the Administrator as reasonable on a case-by-case basis, and, by rule, may extend, modify, or eliminate an exemption if the Administrator determines, on the basis of reasonably available information and after adequate public justification, the exemption warrants extension or modification or is no longer necessary.

(4) CONDITIONS.—As part of a rule promulgated under this subsection, the Administrator shall Include conditions, including reasonable record-keeping, monitoring, and reporting requirements, to the extent that the Administrator determines the conditions are necessary to protect health and the environment while achieving the purposes of the exemption.

(h) CHEMICALS THAT ARE PERSISTENT, BIO-ACCUMULATIVE, AND TOXIC.—

(1) EXPEDITED ACTION.—Not later than 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall propose rules under subsection (a) with respect to chemical substances identified in the 2014 update of the TSCA Work Plan for Chemical Assessments—

(A) that the Administrator has a reasonable basis to conclude are toxic and that with respect to persistence and bioaccumulation score high for one and either high or moderate for the other, pursuant to the TSCA Work Plan Chemicals Methods Document published by the Administrator in February 2012 (or a successor scoring system), and are not a metal or a metal compound, and for which the Administrator has not completed a Work Plan Problem Formulation, initiated a review under section 5, or entered into a consent agreement under section 4, prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act; and

(B) exposure to which under the conditions of use is likely to the general population or to a potentially exposed or susceptible subpopulation identified by the Administrator, or the environment, on the basis of an exposure and use assessment conducted by the Administrator.

(2) NO RISK EVALUATION REQUIRED.—The Administrator shall not be required to conduct risk evaluations on chemical substances that are subject to paragraph (1).

(3) FINAL RULE.—Not later than 18 months after proposing a rule pursuant to paragraph (1), the Administrator shall promulgate a final rule under subsection (a).

(4) SELECTING RESTRICTIONS.—In selecting among prohibitions and other restrictions promulgated in a rule under subsection (a) pursuant to paragraph (1), the Administrator shall address the risks of injury to health or the environment that the Administrator determines are presented by the chemical substance and shall reduce exposure to the substance to the extent practicable.

(5) RELATIONSHIP TO SUBSECTION (b).—If, at any time prior to the date that is 90 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator makes a designation under subsection (b)(1)(B)(i), or receives a request under subsection (b)(4)(C)(ii), such chemical substance shall not be subject to this subsection, except that in selecting among prohibitions and other restrictions promulgated in a rule pursuant to subsection (a), the Administrator shall both ensure that the chemical substance meets the rulemaking standard under subsection (a) and reduce exposure to the substance to the extent practicable.

(i) FINAL AGENCY ACTION.—Under this section and subject to section 18—

(1) a determination by the Administrator under subsection (b)(4)(A) that a chemical substance does not present an unreasonable risk of injury to health or the environment shall be issued by order and considered to be a final agency action, effective beginning on the date of issuance of the order; and

(2) a final rule promulgated under subsection (a), including the associated determination by the Administrator under subsection (b)(4)(A) that a chemical substance presents an unreasonable risk of injury to health or the environment, shall be considered to be a final agency action, effective beginning on the date of promulgation of the final rule.

(j) DEFINITION.—For the purposes of this Act, the term 'requirement' as used in this section shall not displace statutory or common law.

SEC. 7 [§ 2606]. IMMINENT HAZARDS

(a) ACTIONS AUTHORIZED AND REQUIRED.—

(1) The Administrator may commence a civil action in an appropriate district court of the United States—

(A) for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture,

(B) for relief (as authorized by subsection (b)) against any person who manufactures, processes, distributes in commerce, or uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture, or

(C) for both such seizure and relief.

A civil action may be commenced under this paragraph notwithstanding the existence of a ~~rule~~ determination under section ~~4,~~ 5 ~~or~~, 6, a rule under section 4, 5, or 6 or title IV, an order under section 4, 5, or 6 or title IV, ~~[*15 U.S.C. §§ 2603, 2604, 2605, or 2681* et seq.]~~ or ~~an order~~ a consent agreement under section ~~5~~ 4~~[*15 U.S.C. § 2604*]~~, and notwithstanding the pendency of any administrative or judicial proceeding under any provision of this Act [*15 U.S.C. §§ 2601* et seq.].

(2) If the Administrator has not made a rule under section 6(a) [*15 U.S.C. § 2605(a)*] immediately effective (as authorized by subsection 6(d)(3~~2~~)(A)(i) [*15 U.S.C. § 2605(d)(3~~2~~)(A)(i)*]) with respect to an imminently hazardous chemical substance or mixture, the Administrator shall commence in a district court of the United States with respect to such substance or mixture or article containing such substance or mixture a civil action described in subparagraph (A), (B), or (C) of paragraph (1).

(b) RELIEF AUTHORIZED.—

(1) The district court of the United States in which an action under subsection (a) is brought shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk as identified by the Administrator without consideration of costs or other nonrisk factors associated with the chemical substance, mixture, or article involved in such action.

(2) In the case of an action under subsection (a) brought against a person who manufactures, processes, or distributes in commerce a chemical substance or mixture or an article containing a chemical substance or mixture, the relief authorized by paragraph (1) may include the issuance of a mandatory order requiring (A) in the case of purchasers of such substance, mixture, or article known to the defendant, notification to such purchasers of the risk associated with it; (B) public notice of such risk; (C) recall; (D) the replacement or repurchase of such substance, mixture, or article; or (E) any combination of the actions described in the preceding clauses.

(3) In the case of an action under subsection (a) against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process of libel for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings in rem in admiralty.

(c) VENUE AND CONSOLIDATION.—

(1) (A) An action under subsection (a) against a person who manufactures, processes, or distributes a chemical substance or mixture or an article containing a chemical substance or mixture may be brought in the United States District Court for the District of Columbia or for any judicial district in which any of the defendants is found, resides, or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. An action under subsection (a) against a chemical substance, mixture, or article may be brought in any United States district court within the jurisdiction of which the substance, mixture, or article is found.

(B) In determining the judicial district in which an action may be brought under subsection (a) in instances in which such action may be brought in more than one judicial district, the Administrator shall take into account the convenience of the parties.
(C) Subpeonas [Subpoenas] requiring attendance of witnesses in an action brought under subsection (a) may be served in any judicial district.

(2) Whenever proceedings under subsection (a) involving identical chemical substances, mixtures, or articles are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all parties in interest.

(d) ACTION UNDER SECTION 6 [*15 U.S.C. § 2605*].—Where appropriate, concurrently with the filing of an action under subsection (a) or as soon thereafter as may be practicable, the Administrator shall initiate a proceeding for the promulgation of a rule under section 6(a) [*15 U.S.C. 2605(a)*].

(e) REPRESENTATION.—Notwithstanding any other provision of law, in any action under subsection (a), the Administrator may direct attorneys of the Environmental Protection Agency to appear and represent the Administrator in such an action.

(f) DEFINITION.—For the purposes of subsection (a), the term "imminently hazardous chemical substance or mixture" means a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment, without consideration of costs or other nonrisk factors. Such a risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or that any combination of such activities, is likely to result in such injury to health or the environment before a final rule under section 6 [*15 U.S.C. § 2605*] can protect against such risk.

SEC. 8 [§ 2607]. REPORTING AND RETENTION OF INFORMATION

(a) REPORTS.—

(1) The Administrator shall promulgate rules under which—
(A) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance (other than a chemical substance described in subparagraph (B)(ii) shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require, and
(B) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process—
(i) a mixture, or
(ii) a chemical substance in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product,

shall maintain records and submit to the Administrator reports but only to the extent the Administrator determines the maintenance of records or submission of reports, or both, is necessary for the effective enforcement of this Act [*15 U.S.C. §§ 2601* et seq.].

The Administrator may not require in a rule promulgated under this paragraph the maintenance of records or the submission of reports with respect to changes in the proportions of the components of a mixture unless the Administrator finds that the maintenance of such records or the submission of such reports, or both, is necessary for the effective enforcement of this Act [*15 U.S.C. §§ 2601* et seq.]. For purposes of the compilation of the list of chemical substances required under subsection (b), the Administrator shall promulgate rules pursuant to this subsection not later than 180 days after the effective date of this Act.

(2) The Administrator may require under paragraph (1) maintenance of records and reporting with respect to the following insofar as known to the person making the report or insofar as reasonably ascertainable:

(A) The common or trade name, the chemical identity, and the molecular structure of each chemical substance or mixture for which such a report is required.

(B) The categories or proposed categories of use of each such substance or mixture.

(C) The total amount of each such substance and mixture manufactured or processed, reasonable estimates of the total amount to be manufactured or processed, the amount manufactured or processed for each of its categories of use, and reasonable estimates of the amount to be manufactured or processed for each of its categories of use or proposed categories of use.

(D) A description of the byproducts resulting from the manufacture, processing, use, or disposal of each such substance or mixture.

(E) All existing ~~data~~ information concerning the environmental and health effects of such substance or mixture.

(F) The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance or mixture in their places of employment and the duration of such exposure.

(G) In the initial report under paragraph (1) on such substance or mixture, the manner or method of its disposal, and in any subsequent report on such substance or mixture, any change in such manner or method.

~~To the extent feasible, the Administrator shall not require under paragraph (1), any reporting which is unnecessary or duplicative.~~

(3) (A) (i) The Administrator may by rule require a small manufacturer or processor of a chemical substance to submit to the Administrator such information respecting the chemical substance as the Administrator may require for publication of the first list of chemical substances required by subsection (b).

(ii) The Administrator may by rule require a small manufacturer or processor of a chemical substance or mixture—

(I) subject to a rule proposed or promulgated under section 4, 5(b)(4), or 6 [*15 U.S.C. § 2603*, *2604(b)(4)*, or *2605*], ~~or~~ an order in effect under section 5(e), or a consent agreement under section 4 [*15 U.S.C. § 2604(e)*], or

(II) with respect to which relief has been granted pursuant to a civil action brought under section 5 or 7 [*15 U.S.C. § 2604* or *2606*],

to maintain such records on such substance or mixture, and to submit to the Administrator such reports on such substance or mixture, as the Administrator may reasonably require. A rule under this clause requiring reporting may require reporting with respect to the matters referred to in paragraph (2).

(B) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of this paragraph and paragraph (1).

(C) Not later than 180 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and not less frequently than once every 10 years thereafter, the Administrator, after consultation with the Administrator of the Small Business Administration, shall—

(i) review the adequacy of the standards prescribed under subparagraph (B); and

(ii) after providing public notice and an opportunity for comment, make a determination as to whether revision of the standards is warranted; and

(4) CONTENTS.—The rules promulgated pursuant to paragraph (1)—

(A) may impose differing reporting and recordkeeping requirements on manufacturers and processors; and

(B) shall include the level of detail necessary to be reported, including the manner by which use and exposure information may be reported.

(5) ADMINISTRATION.—In carrying out this section, the Administrator shall, to the extent feasible—

(A) not require reporting which is unnecessary or duplicative;

(B) minimize the cost of compliance with this section and the rules issued thereunder on small manufacturers and processors; and

(C) apply any reporting obligations to those persons likely to have information relevant to the effective implementation of this title.

(6) NEGOTIATED RULEMAKING.—(A) The Administrator shall enter into a negotiated rulemaking pursuant to subchapter III of chapter 5 of title 5, United States Code, to develop and publish, not later than 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, a proposed rule providing for limiting the reporting requirements, under this subsection, for manufacturers of any inorganic byproducts, when such byproducts, whether by the byproduct manufacturer or by any other person, are subsequently recycled, reused, or reprocessed.

(B) Not later than 3 and one-half years after such date of enactment, the Administrator shall publish a final rule resulting from such negotiated rulemaking.

(b) INVENTORY.—

(1) The Administrator shall compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. Such list shall at least include each chemical substance which any person reports, under section 5 [*15 U.S.C. § 2604*] or subsection (a) of this section, is manufactured or processed in the United States. Such list may not include any chemical substance which was not manufactured or processed in the United States within three years before the effective date of the rules promulgated pursuant to the last sentence of subsection (a)(1). In the case of a chemical substance for which a notice is submitted in accordance with section 5 [*15 U.S.C. § 2604*], such chemical substance shall be included in such list as of the earliest date (as determined by the Administrator) on which such substance was manufactured or processed in the United States. The Administrator shall first publish such a list not later than 315 days after the effective date of this Act [see effective date note to *15 U.S.C. § 2601*]. The Administrator shall not include in such list any chemical substance which is manufactured or processed only in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product.

(2) To the extent consistent with the purposes of this Act [*15 U.S.C. §§ 2601* et seq.], the Administrator may, in lieu of listing, pursuant to paragraph (1), a chemical substance individually, list a category of chemical substances in which such substance is included.

(c) RECORDS.—Any person who manufactures, processes, or distributes in commerce any chemical substance or mixture shall maintain records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture. Records of such adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. Any other record of such adverse reactions shall be retained for a period of five years from the date the information contained in the record was first reported to or known by the person maintaining the record. Records required to be maintained under this subsection shall include records of consumer allegations of personal injury or harm to health, reports of occupational disease or injury, and reports or complaints of injury to the environment submitted to the manufacturer, processor, or distributor in commerce from any source. Upon request of any duly designated representative of the Administrator, each person who is required to maintain records under this subsection shall permit the inspection of such records and shall submit copies of such records.

(d) HEALTH AND SAFETY STUDIES.—The Administrator shall promulgate rules under which the Administrator shall require any person who manufactures, processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce any chemical substance or

mixture (or with respect to paragraph (2), any person who has possession of a study) to submit to the Administrator—

(1) lists of health and safety studies (A) conducted or initiated by or for such person with respect to such substance or mixture at any time, (B) known to such person; or (C) reasonably ascertainable by such person, except that the Administrator may exclude certain types or categories of studies from the requirements of this subsection if the Administrator finds that submission of lists of such studies are unnecessary to carry out the purposes of this Act [*15 U.S.C. §§ 2601* et seq.]; and

(2) copies of any study contained on a list submitted pursuant to paragraph (1) or otherwise known by such person.

(3) NOMENCLATURE.—

(A) IN GENERAL.—In carrying out paragraph (1), the Administrator shall—

(i) maintain the use of Class 2 nomenclature in use on the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act;

(ii) maintain the use of the Soap and Detergent Association Nomenclature System, published in March 1978 by the Administrator in section 1 of addendum III of the document entitled 'Candidate List of Chemical Substances', and further described in the appendix A of volume I of the 1985 edition of the Toxic Substances Control Act Substances Inventory (EPA Document No. EPA–560/7–85–002a); and

(iii) treat the individual members of the categories of chemical substances identified by the Administrator as statutory mixtures, as defined in Inventory descriptions established by the Administrator, as being included on the list established under paragraph (1).

(B) MULTIPLE NOMENCLATURE LISTINGS.—If a manufacturer or processor demonstrates to the Administrator that a chemical substance appears multiple times on the list published under paragraph (1) under different CAS numbers, the Administrator may recognize the multiple listings as a single chemical substance.

(4) CHEMICAL SUBSTANCES IN COMMERCE.—

(A) RULES.—

(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator, by rule, shall require manufacturers, and may require processors, subject to the limitations under subsection (a)(5)(A), to notify the Administrator, by not later than 180 days after the date on which the final rule is published in the Federal Register, of each chemical substance on the list published under paragraph (1) that the manufacturer or processor, as applicable, has manufactured or processed for a non-exempt commercial purpose during the 10-year period ending on the day before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(ii) ACTIVE SUBSTANCES.—The Administrator shall designate chemical substances for which notices are received under clause (i) to be active substances on the list published under paragraph (1).

(iii) INACTIVE SUBSTANCES.—The Administrator shall designate chemical substances for which no notices are received under clause (i) to be inactive substances on the list published under paragraph (1).

(iv) LIMITATION.—No chemical substance on the list published under paragraph (1) shall be removed from such list by reason of the implementation of this subparagraph, or be subject to section 5(a)(1)(A)(i) by reason of a change to active status under paragraph (5)(B).

(B) CONFIDENTIAL CHEMICAL SUBSTANCES.—In promulgating a rule under sub-paragraph (A), the Administrator shall—

(i) maintain the list under paragraph (1), which shall include a confidential portion and a nonconfidential portion consistent with this section and section 14;

(ii) require any manufacturer or processor of a chemical substance on the confidential portion of the list published under paragraph (1) that seeks to maintain an existing claim for protection against disclosure of the specific chemical identity of the chemical substance as confidential pursuant to section 14 to submit a notice under subparagraph (A) that includes such request;

(iii) require the substantiation of those claims pursuant to section 14 and in accordance with the review plan described in subparagraph (C); and

(iv) move any active chemical substance for which no request was received to maintain an existing claim for protection against disclosure of the specific chemical identity of the chemical substance as confidential from the confidential portion of the list published under paragraph (1) to the nonconfidential portion of that list.

(C) REVIEW PLAN.—Not later than 1 year after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A), the Administrator shall promulgate a rule that establishes a plan to review all claims to protect the specific chemical identities of chemical substances on the confidential portion of the list published under paragraph (1) that are asserted pursuant to subparagraph (B).

(D) REQUIREMENTS OF REVIEW PLAN.—

In establishing the review plan under subparagraph (C), the Administrator shall—

(i) require, at a time specified by the Administrator, all manufacturers or processors asserting claims under subparagraph (B) to substantiate the claim, in accordance with section 14, unless the manufacturer or processor has substantiated the claim in a submission made to the Administrator during the 5-year period ending on the last day of the of the time period specified by the Administrator; and

(ii) in accordance with section 14—

(I) review each substantiation—

(aa) submitted pursuant to Clause (i) to determine if the claim qualifies for protection from disclosure; and

(bb) submitted previously by a manufacturer or processor and relied on in lieu of the substantiation required pursuant to clause (i), if the substantiation has not been previously reviewed by the Administrator, to determine if the claim warrants protection from disclosure;

(II) approve, approve in part and deny in part, or deny each claim; and

(III) except as provided in this section and section 14, protect from disclosure information for which the Administrator approves such a claim for a period of 10 years, unless, prior to the expiration of the period—

(aa) the person notifies the Administrator that the person is withdrawing the claim, in which case the Administrator shall not protect the information from disclosure; or

(bb) the Administrator otherwise becomes aware that the information does not qualify for protection from disclosure, in which case the Administrator shall take the actions described in section 14(g)(2).

(E) TIMELINE FOR COMPLETION OF REVIEWS.—

(i) IN GENERAL.—The Administrator shall implement the review plan so as to complete reviews of all claims specified in subparagraph (C) not later than 5 years after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A).

(ii) CONSIDERATIONS.—

(I) IN GENERAL.—The Administrator may extend the deadline for completion of the reviews for not more than 2 additional years, after an adequate public justification, if the Administrator determines that the extension is necessary based on the number of claims needing review and the available resources.

(II) ANNUAL REVIEW GOAL AND RESULTS.—At the beginning of each year, the Administrator shall publish an annual goal for reviews and the number of reviews completed in the prior year.

(5) ACTIVE AND INACTIVE SUBSTANCES.—

(A) IN GENERAL.—The Administrator shall keep designations of active substances and inactive substances on the list published under paragraph (1) current.

(B) CHANGE TO ACTIVE STATUS.—

(i) IN GENERAL.—Any person that intends to manufacture or process for a nonexempt commercial purpose a chemical substance that is designated as an inactive substance shall notify the Administrator before the date on which the inactive substance is manufactured or processed.

(ii) CONFIDENTIAL CHEMICAL IDENTITY.—If a person submitting a notice under clause (i) for an inactive substance on the confidential portion of the list published under paragraph (1) seeks to maintain an existing claim for protection against disclosure of the specific chemical identity of the inactive substance as confidential, the person shall, consistent with the requirements of section 14—

(I) in the notice submitted under clause (i), assert the claim; and

(II) by not later than 30 days after providing the notice under clause (i), substantiate the claim.

(iii) ACTIVE STATUS.—On receiving a notification under clause (i), the Administrator shall—

(I) designate the applicable chemical substance as an active substance;

(II) pursuant to section 14, promptly review any claim and associated substantiation submitted pursuant to clause (ii) for protection against disclosure of the specific chemical identity of the chemical substance and approve, approve in part and deny in part, or deny the claim;

(III) except as provided in this section and section 14, protect from disclosure the specific chemical identity of the chemical substance for which the Administrator approves a claim under subclause (II) for a period of 10 years, unless, prior to the expiration of the period—

(aa) the person notifies the Administrator that the person is withdrawing the claim, in which case the Administrator shall not protect the information from disclosure; or

(bb) the Administrator otherwise becomes aware that the information does not qualify for protection from disclosure, in which case the Administrator shall take the actions described in section 14(g)(2); and

(IV) pursuant to section 6(b), review the priority of the chemical substance as the Administrator determines to be necessary.

(C) CATEGORY STATUS.—The list of inactive substances shall not be considered to be a category for purposes of section 26(c).

(6) INTERIM LIST OF ACTIVE SUBSTANCES.—

Prior to the promulgation of the rule required under paragraph (4)(A), the Administrator shall designate the chemical substances reported under part 711 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act), during the reporting period that most closely preceded the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, as the interim list of active substances for the purposes of section 6(b).

(7) PUBLIC INFORMATION.—Subject to this subsection and section 14, the Administrator shall make available to the public—

(A) each specific chemical identity on the Nonconfidential portion of the list published under paragraph (1) along with the Administrator's designation of the chemical substance as an active or inactive substance;

(B) the unique identifier assigned under section 14, accession number, generic name, and, if applicable, premanufacture notice case number for each chemical substance on the confidential portion of the list published under paragraph (1) for which a claim of confidentiality was received; and

(C) the specific chemical identity of any active substance for which—

(i) a claim for protection against disclosure of the specific chemical identity of the active substance was not asserted, as required under this subsection or section 14;

(ii) all claims for protection against disclosure of the specific chemical identity of the active substance have been denied by the Administrator; or

(iii) the time period for protection against disclosure of the specific chemical identity of the active substance has expired.

(8) LIMITATION.—No person may assert a new claim under this subsection or section 14 for protection from disclosure of a specific chemical identity of any active or inactive substance for which a notice is received under paragraph (4)(A)(i) or (5)(B)(i) that is not on the confidential portion of the list published under paragraph (1).

(9) CERTIFICATION.—Under the rules promulgated under this subsection, manufacturers and processors, as applicable, shall be required—

(A) to certify that each notice or substantiation the manufacturer or processor submits complies with the requirements of the rule, and that any confidentiality claims are true and correct; and

(B) to retain a record documenting compliance with the rule and supporting confidentiality claims for a period of 5 years beginning on the last day of the submission period.

(10) MERCURY.—

(A) DEFINITION OF MERCURY.—In this paragraph, notwithstanding section 3(2)(B), the term 'mercury' means—

(i) elemental mercury; and

(ii) a mercury compound.

(B) PUBLICATION.—Not later than April 1, 2017, and every 3 years thereafter, the Administrator shall carry out and publish in the Federal Register an inventory of mercury supply, use, and trade in the United States.

(C) PROCESS.—In carrying out the inventory under subparagraph (B), the Administrator shall—

(i) identify any manufacturing processes or products that intentionally add

mercury; and

(ii) recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use.

(D) REPORTING.—

(i) IN GENERAL.—To assist in the preparation of the inventory under subparagraph (B), any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process shall make periodic reports to the Administrator, at such time and including such information as the Administrator shall determine by rule promulgated not later than 2 years after the date of enactment of this paragraph.

(ii) COORDINATION.—To avoid duplication, the Administrator shall coordinate the reporting under this subparagraph with the Interstate Mercury Education and Reduction Clearinghouse.

(iii) EXEMPTION.—Clause (i) shall not apply to a person engaged in the generation, handling, or management of mercury-containing waste, unless that person manufactures or recovers mercury in the management of that waste.

(e) NOTICE TO ADMINISTRATOR OF SUBSTANTIAL RISKS.—Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

(f) DEFINITIONS.—For purposes of this section, the terms "manufacture" and "process" mean manufacture or process for commercial purposes.

SEC. 9 [§ 2608]. RELATIONSHIP TO OTHER FEDERAL LAWS

(a) LAWS NOT ADMINISTERED BY THE ADMINISTRATOR.—

(1) If the Administrator determines ~~has reasonable basis to conclude~~ that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents ~~or will present~~ an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator, under the conditions of use, and determines, in the Administrator's discretion, that such risk may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by the Administrator, the Administrator shall submit to the agency which

administers such law a report which describes such risk and includes in such description a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk. Such report shall also request such agency—

(A) (i) to determine if the risk described in such report may be prevented or reduced to a sufficient extent by action taken under such law, and

(ii) if the agency determines that such risk may be so prevented or reduced, to issue an order declaring whether or not the activity or combination of activities specified in the description of such risk presents such risk; and

(B) to respond to the Administrator with respect to the matters described in subparagraph (A).

Any report of the Administrator shall include a detailed statement of the information on which it is based and shall be published in the Federal Register. The agency receiving a request under such a report shall make the requested determination, issue the requested order, and make the requested response within such time as the Administrator specifies in the request, but such time specified may not be less than 90 days from the date the request was made. The response of an agency shall be accompanied by a detailed statement of the findings and conclusions of the agency and shall be published in the Federal Register.

(2) If the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which such report was made either—

(A) issues an order, within the time period specified by the Administrator in the report declaring that the activity or combination of activities specified in the description of the risk described in the report does not present the risk described in the report, or

(B) responds within the time period specified by the Administrator in the report and initiates, within 90 days of the publication in the Federal Register of the response of the agency under paragraph (1), action under the law (or laws) administered by such agency to protect against such risk associated with such activity or combination of activities,

the Administrator may not take any action under section 6(a) or 7 [*15 U.S.C. § 2605* or *2606*] with respect to such risk.

(3) The Administrator shall take the actions described in paragraph (4) if the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which the report was made does not—

(A) issue the order described in paragraph (2)(A) within the time period specified by the Administrator in the report; or

(B) (i) respond under paragraph (1) within the timeframe specified by the Administrator in the report; and

(ii) initiate action within 90 days of publication in the Federal Register of the response described in clause (i).

(4) If an agency to which a report is submitted under paragraph (1) does not take the actions described in subparagraph (A) or (B) of paragraph (3), the Administrator shall—

(A) initiate or complete appropriate action under section 6; or

(B) take any action authorized or required under section 7, as applicable.

(5) This subsection shall not relieve the Administrator of any obligation to take any appropriate action under section 6(a) or 7 to address risks from the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of those activities, that are not identified in a report issued by the Administrator under paragraph (1).

(~~3~~6) If the Administrator has initiated action under section 6(a) or 7 [*15 U.S.C. § 2605* or *2606*] with respect to a risk associated with a chemical substance or mixture which was the subject of a report made to an agency under paragraph (1), such agency shall before taking action under the law (or laws) administered by it to protect against such risk consult with the Administrator for the purpose of avoiding duplication of Federal action against such risk.

(b) LAWS ADMINISTERED BY THE ADMINISTRATOR.—(1) The Administrator shall coordinate actions taken under this Act [*15 U.S.C. §§ 2601* et seq.] with actions taken under other Federal laws administered in whole or in part by the Administrator. If the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under this Act [*15 U.S.C. §§ 2601* et seq.]. This subsection shall not be construed to relieve the Administrator of any requirement imposed on the Administrator by such other Federal laws.

(2) In making a determination under paragraph (1) that it is in the public interest for the Administrator to take an action under this title with respect to a chemical substance or mixture rather than under another law administered in whole or in part by the Administrator, the Administrator shall consider, based on information reasonably available to the Administrator, all relevant aspects of the risk described in paragraph (1) and a comparison of the estimated costs and efficiencies of the action to be taken under this title and an action to be taken under such other law to protect against such risk.

(c) OCCUPATIONAL SAFETY AND HEALTH.—In exercising any authority under this Act [*15 U.S.C. §§ 2601* et seq.], the Administrator shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 [*29 U.S.C. § 653(b)(1)*], be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(d) COORDINATION.—In administering this Act [*15 U.S.C. §§ 2601* et seq.], the Administrator shall consult and coordinate with the Secretary of Health and Human Services~~, Education, and Welfare [Secretary of Health and Human Services]~~ and the heads of any other appropriate Federal executive department or agency, any relevant independent regulatory agency, and any other appropriate instrumentality of the Federal Government for the purpose of achieving the maximum enforcement of this Act [*15 U.S.C. §§ 2601* et seq.] while imposing the least burdens

of duplicative requirements on those subject to the Act and for other purposes. The Administrator shall, in the report required by section 30 [*15 U.S.C. § 2629*], report annually to the Congress on actions taken to coordinate with such other Federal departments, agencies, or instrumentalities, and on actions taken to coordinate the authority under this Act with the authority granted under other Acts referred to in subsection (b).

(e) EXPOSURE INFORMATION.—In addition to the requirements of subsection (a), if the Administrator obtains information related to exposures or releases of a chemical substance or mixture that may be prevented or reduced under another Federal law, including a law not administered by the Administrator, the Administrator shall make such information available to the relevant Federal agency or office of the Environmental Protection Agency.

SEC. 10 [§ 2609]. RESEARCH, DEVELOPMENT, COLLECTION, DISSEMINATION, AND UTILIZATION OF ~~DATA~~ INFORMATION

(a) AUTHORITY.—The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services~~, Education, and Welfare~~ and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this Act. The Administrator may enter into contracts and may make grants for research, development, and monitoring under this subsection. Contracts may be entered into under this subsection without regard to sections 3648 and 3709 of the Revised Statutes (*31 U.S.C. 529* [*31 U.S.C. § 3324(a)*, (b)], 14 [*41] U.S.C. 5*).

(b) ~~DATA~~ INFORMATION SYSTEMS.—

(1) The Administrator shall establish, administer, and be responsible for the continuing activities of an interagency committee which shall design, establish, and coordinate an efficient and effective system, within the Environmental Protection Agency, for the collection, dissemination to other Federal departments and agencies, and use of ~~data~~ information submitted to the Administrator under this Act [*15 U.S.C. §§ 2601* et seq.].

(2)(A) The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services~~, Education, and Welfare~~ and other heads of appropriate departments and agencies design, establish, and coordinate an efficient and effective system for the retrieval of toxicological and other scientific ~~data~~ information which could be useful to the Administrator in carrying out the purposes of this Act [*15 U.S.C. §§ 2601* et seq.]. Systematized retrieval shall be developed for use by all Federal and other departments and agencies with responsibilities in the area of regulation or study of chemical substances and mixtures and their effect on health or the environment.

(B) The Administrator, in consultation and cooperation with the Secretary of Health and Human Services~~, Education, and Welfare,~~ may make grants and enter into contracts for the development of an ~~data~~ information retrieval system described in subparagraph (A). Contracts may be entered into under this subparagraph without regard to sections 3648 and 3709 of the Revised Statutes (*31 U.S.C. 529* [*31 U.S.C. § 3324(a)*, (b)], *41 U.S.C. 5*).

(c) SCREENING TECHNIQUES.—The Administrator shall coordinate, with the Assistant Secretary for Health of the Department of Health and Human Services, ~~Education, and Welfare~~, research undertaken by the Administrator and directed toward the development of rapid, reliable, and economical screening techniques for carcinogenic, mutagenic, teratogenic, and ecological effects of chemical substances and mixtures.

(d) MONITORING.—The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, ~~Education, and Welfare~~, establish and be responsible for research aimed at the development, in cooperation with local, State, and Federal agencies, of monitoring techniques and instruments which may be used in the detection of toxic chemical substances and mixtures and which are reliable, economical, and capable of being implemented under a wide variety of conditions.

(e) BASIC RESEARCH.—The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, ~~Education, and Welfare~~, establish research programs to develop the fundamental scientific basis of the screening and monitoring techniques described in subsections (c) and (d), the bounds of the reliability of such techniques, and the opportunities for their improvement.

(f) TRAINING.—The Administrator shall establish and promote programs and workshops to train or facilitate the training of Federal laboratory and technical personnel in existing or newly developed screening and monitoring techniques.

(g) EXCHANGE OF RESEARCH AND DEVELOPMENT RESULTS.—The Administrator shall, in consultation with the Secretary of Health and Human Services, ~~Education, and Welfare~~ and other heads of appropriate departments and agencies, establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard ~~data~~ information format and analysis and consistent testing procedures.

SEC. 11 [§ 2610]. INSPECTIONS AND SUBPOENAS

(a) IN GENERAL.—For purposes of administering this Act [*15 U.S.C. §§ 2601* et seq.], the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances, mixtures, or products subject to title IV [*15 U.S.C. §§ 2681* et seq.] are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, such products, or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(b) SCOPE.—

(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this Act [*15 U.S.C. §§ 2601* et seq.] applicable to the chemical substances, mixtures, or products subject to title IV [*15 U.S.C. §§ 2681* et seq.] within such premises or conveyance have been complied with.

(2) No inspection under subsection (a) shall extend to—
(A) financial ~~data~~information,
(B) sales ~~data~~information (other than shipment ~~data~~information),
(C) pricing ~~data~~information,
(D) personnel ~~data~~information, or
(E) research ~~data~~information (other than ~~data~~information required by this Act [*15 U.S.C. §§ 2601* et seq.] or under a rule promulgated thereunder),
unless the nature and extent of such ~~data~~information are described with reasonable specificity in the written notice required by subsection (a) for such inspection.

(c) SUBPOENAS.—In carrying out this Act [*15 U.S.C. §§ 2601* et seq.], the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure, or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

SEC. 12 [§ 2611]. EXPORTS

(a) IN GENERAL.—

(1) Except as provided in paragraph (2) and subsections (b) and (c), this Act (other than section 8 [*15 U.S.C. § 2607*]) shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—
(A) it can be shown that such substance, mixture, or article is being manufactured, processed, or distributed in commerce for export from the United States, unless such substance, mixture, or article was, in fact, manufactured, processed, or distributed in commerce, for use in the United States, and
(B) such substance, mixture, or article (when distributed in commerce), or any container in which it is enclosed (when so distributed), bears a stamp or label stating that such substance, mixture, or article is intended for export.

(2) Paragraph (1) shall not apply to any chemical substance, mixture, or article if the Administrator finds that the substance, mixture, or article ~~will present~~presents an unreasonable

risk of injury to health within the United States or to the environment of the United States. The Administrator may require, under section 4 [*15 U.S.C. § 2603*], testing of any chemical substance or mixture exempted from this Act [*15 U.S.C. §§ 2601* et seq.] by paragraph (1) for the purpose of determining whether or not such substance or mixture presents an unreasonable risk of injury to health within the United States or to the environment of the United States.

(b) NOTICE.—

(1) If any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of ~~data~~information is required under section 4 or 5(b) [*15 U.S.C. § 2603* or *2604(b)*], such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of the availability of the ~~data~~information submitted to the Administrator under such section for such substance or mixture.

(2) If any person exports or intends to export to a foreign country a chemical substance or mixture for which an order has been issued under section 5 [*15 U.S.C. § 2604*] or a rule has been proposed or promulgated under section 5 or 6 [*15 U.S.C. § 2604* or *2605*], or with respect to which an action is pending, or relief has been granted under section 5 or 7 [*15 U.S.C. § 2604* or *2606*], such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule, order, action, or relief.

(c) PROHIBITION ON EXPORT OF ELEMENTAL MERCURY AND MERCURY COMPOUNDS.—

(1) Prohibition. Effective January 1, 2013, the export of elemental mercury from the United States is prohibited.

(2) Inapplicability of Subsection (a). Subsection (a) shall not apply to this subsection.

(3) Report to Congress on mercury compounds.

(A) Report. Not later than one year after the date of enactment of the Mercury Export Ban Act of 2008 [enacted Oct. 14, 2008], the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if any, that may currently be used in significant quantities in products or processes. Such report shall include an analysis of—

(i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;

(ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;

(iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;

(iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and

(v) other relevant information that Congress should consider in determining whether to extend the export prohibition to include one or more of these mercury compounds.

(B) Procedure. For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this title, including sections 10 and 11 [*15 U.S.C. §§ 2609* and *2610*].

(4) Essential use exemption.

(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

(i) nonmercury alternatives for the specified use are not available in the country where the facility is located;

(ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;

(iii) the country where the elemental mercury will be used certifies its support for the exemption;

(iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;

(v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

(vi) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and

(vii) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

(B) Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.

(C) The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).

(D) A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act under section 15 [*15 U.S.C. § 2614*], and shall be subject to penalties under section 16 [*15 U.S.C. § 2615*], injunctive relief under section 17 [*15 U.S.C. § 2616*], and citizen suits under section 20 [*15 U.S.C. § 2619*].

(5) Consistency with trade obligations. Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

(6) Export of coal. Nothing in this subsection shall be construed to prohibit the export of coal.

(7) PROHIBITION ON EXPORT OF CERTAIN MERCURY COMPOUNDS.—

(A) IN GENERAL.—Effective January 1, 2020, the export of the following mercury compounds is prohibited:

(i) Mercury (I) chloride or calomel.

(ii) Mercury (II) oxide.

(iii) Mercury (II) sulfate.

(iv) Mercury (II) nitrate.

(v) Cinnabar or mercury sulphide.

(vi) Any mercury compound that the Administrator adds to the list published under subparagraph (B) by rule, on determining that exporting that mercury com- pound for the purpose of regenerating elemental mercury is technically feasible.

(B) PUBLICATION.—Not later than 90 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and as appropriate thereafter, the Administrator shall publish in the Federal Register a list of the mercury compounds that are prohibited from export under this paragraph.

(C) PETITION.—Any person may petition the Administrator to add a mercury compound to the list published under subparagraph (B).

(D) ENVIRONMENTALLY SOUND DISPOSAL.—This paragraph does not prohibit the export of mercury compounds on the list published under subparagraph (B) to member countries of the Organization for Economic Cooperation and Development for environmentally sound disposal, on the condition that no mercury or mercury compounds so exported are to be recovered, recycled, or reclaimed for use, or directly reused, after such export.

(E) REPORT.—Not later than 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall evaluate any exports of mercury compounds on the list published under subparagraph (B) for disposal that occurred after such date of enactment and shall submit to Congress a report that—

(i) describes volumes and sources of mercury compounds on the list published under subparagraph (B) exported for disposal;

(ii) identifies receiving countries of such exports;

(iii) describes methods of disposal used after such export;

(iv) identifies issues, if any, presented by the export of mercury compounds on the list published under subparagraph (B);

(v) includes an evaluation of management options in the United States for mercury compounds on the list published under subparagraph (B), if any, that are commercially available and comparable in cost and efficacy to methods being utilized in such receiving countries; and

(vi) makes a recommendation regarding whether Congress should further limit or prohibit the export of mercury compounds on the list published under subparagraph (B) for disposal.

(F) EFFECT ON OTHER LAW.—Nothing in this paragraph shall be construed to affect the authority of the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et 25 seq.)

SEC. 13 [§ 2612]. ENTRY INTO CUSTOMS TERRITORY OF THE UNITED STATES

(a) IN GENERAL.—

(1) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if—

(A) it fails to comply with any rule in effect under this Act [*15 U.S.C. §§ 2601* et seq.], or

(B) it is offered for entry in violation of section 5, 6, or title IV [*15 U.S.C. § 2604*, *2605*, or *§§ 2681* et seq.], a rule or order under section 5, 6, or title IV [*15 U.S.C. § 2604*, *2605*, or *§§ 2681* et seq.], or an order issued in a civil action brought under section 5, 7, or title IV [*15 U.S.C. § 2604*, *2606*, or *§§ 2681* et seq.].

(2) If a chemical substance, mixture, or article is refused entry under paragraph (1), the Secretary of the Treasury shall notify the consignee of such entry refusal, shall not release it to the consignee, and shall cause its disposal or storage (under such rules as the Secretary of the Treasury may prescribe) if it has not been exported by the consignee within 90 days from the date of receipt of notice of such refusal, except that the Secretary of the Treasury may, pending a review by the Administrator of the entry refusal, release to the consignee such substance, mixture, or article on execution of bond for the amount of the full invoice of such substance, mixture, or article (as such value is set forth in the customs entry), together with the duty thereon. On failure to return such substance, mixture, or article for any cause to the custody of the Secretary of the Treasury when demanded, such consignee shall be liable to the United States for liquidated damages equal to the full amount of such bond. All charges for storage, cartage, and labor on and for disposal of substances, mixtures, or articles which are refused entry or release under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future entry made by such owner or consignee.

(b) RULES.—The Secretary of the Treasury, after consultation with the Administrator, shall issue rules for the administration of subsection (a) of this section.

SEC. 14 [§ 2613]. CONFIDENTIAL INFORMATION.

(a) IN GENERAL.—Except as provided in this section, the Administrator shall not disclose information that is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section—

(1) that is reported to, or otherwise obtained by, the Administrator under this Act; and

(2) for which the requirements of subsection (c) are met.

In any proceeding under section 552(a) of title 5, United States Code, to obtain information the disclosure of which has been denied because of the provisions of this subsection, the Administrator may not rely on section 552(b)(3) of such title to sustain the Administrator's action.

(b) INFORMATION NOT PROTECTED FROM DISCLOSURE.—

(1) MIXED CONFIDENTIAL AND NONCONFIDENTIAL INFORMATION.—Information that is protected from disclosure under this section, and which is mixed with information that is not protected from disclosure under this section, does not lose its protection from disclosure notwithstanding that it is mixed with information that is not protected from disclosure.

(2) INFORMATION FROM HEALTH AND SAFETY STUDIES.—Subsection (a) does not prohibit the disclosure of—

(A) any health and safety study which is submitted under this Act with respect to—

(i) any chemical substance or mixture which, on the date on which such study is to be disclosed has been offered for commercial distribution; or

(ii) any chemical substance or mixture for which testing is required under section 4 or for which notification is required under section 5; and

(B) any information reported to, or otherwise obtained by, the Administrator from a health and safety study which relates to a chemical substance or mixture described in clause (i) or (ii) of subparagraph (A).

This paragraph does not authorize the disclosure of any information, including formulas (including molecular structures) of a chemical substance or mixture, that discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the portion of the mixture comprised by any of the chemical substances in the mixture.

(3) OTHER INFORMATION NOT PROTECTED FROM DISCLOSURE.—Subsection (a) does not prohibit the disclosure of—

(A) any general information describing the manufacturing volumes, expressed as specific aggregated volumes or, if the Administrator determines that disclosure of specific aggregated volumes would reveal confidential information, expressed in ranges; or

(B) a general description of a process used in the manufacture or processing and industrial, commercial, or consumer functions and uses of a chemical substance, mixture, or article containing a chemical substance or mixture, including information specific to an industry or industry sector that customarily would be shared with the general public or within an industry or industry sector.

(4) BANS AND PHASE-OUTS.—

(A) IN GENERAL.—If the Administrator promulgates a rule pursuant to section 6(a) that establishes a ban or phase-out of a chemical substance or mixture, the protection from disclosure of any information under this section with respect to the chemical substance or mixture shall be presumed to no longer apply, subject to subsection (g)(1)(E) and subparagraphs (B) and (C) of this paragraph.

(B) LIMITATIONS.—

(i) CRITICAL USE.—In the case of a chemical substance or mixture for which a specific condition of use is subject to an exemption pursuant to section 6(g), if the Administrator establishes a ban or phase-out described in subparagraph (A) with respect to the chemical substance or mixture, the presumption against protection under such subparagraph shall only apply to information that relates solely to any conditions of use of the chemical substance or mixture to which the exemption does not apply.

(ii) EXPORT.—In the case of a chemical substance or mixture for which there is manufacture, processing, or distribution in commerce that meets the conditions of section 12(a)(1), if the Administrator establishes a ban or phase-out described in sub- paragraph (A) with respect to the chemical substance or mixture, the presumption against protection under such subparagraph shall only apply to information that relates solely to any other manufacture, processing, or distribution in commerce of the chemical substance or mixture for the conditions of use subject to the ban or phase-out, unless the Administrator makes the determination in section 12(a)(2).

(iii) SPECIFIC CONDITIONS OF USE.—In the case of a chemical substance or mixture for which the Administrator establishes a ban or phase-out described in subparagraph (A) with respect to a specific condition of use of the chemical substance or mixture, the presumption against protection under such subparagraph shall only apply to information that relates solely to the condition of use of the chemical substance or mixture for which the ban or phase-out is established.

(C) REQUEST FOR NONDISCLOSURE.— (i) IN GENERAL.—A manufacturer or processor of a chemical substance or mixture subject to a ban or phase-out described in this paragraph may submit to the Administrator, within 30 days of receiving a notification under subsection (g)(2)(A), a request, including documentation supporting such request, that some or all of the information to which the notice applies should not be disclosed or that its disclosure should be delayed, and the Administrator shall review the request under subsection (g)(1)(E).

(ii) EFFECT OF NO REQUEST OR DENIAL.—If no request for nondisclosure or delay is submitted to the Administrator under this subparagraph, or the Administrator denies such a request under subsection (g)(1)(A), the information shall not be protected from disclosure under this section.

(5) CERTAIN REQUESTS.—If a request is made to the Administrator under section 552(a) of title 5, United States Code, for information reported to or otherwise obtained by the Administrator under this Act that is not protected from disclosure under this subsection, the Administrator may not deny the request on the basis of section 552(b)(4) of title 5, United States Code.

(c) REQUIREMENTS FOR CONFIDENTIALITY CLAIMS.—

(1) ASSERTION OF CLAIMS.—

(A) IN GENERAL.—A person seeking to protect from disclosure any information that person submits under this Act (including information described in paragraph (2)) shall assert to the Administrator a claim for protection from disclosure concurrent with submission of the information, in accordance with such rules regarding a claim for protection from disclosure as the Administrator has promulgated or may promulgate pursuant to this title.

(B) INCLUSION.—An assertion of a claim under subparagraph (A) shall include a statement that the person has—

(i) taken reasonable measures to protect the confidentiality of the information;

(ii) determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;

(iii) a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person; and

(iv) a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

(C) ADDITIONAL REQUIREMENTS FOR CLAIMS REGARDING CHEMICAL IDENTITY INFORMATION.—In the case of a claim under subparagraph (A) for protection from disclosure of a specific chemical identity, the claim shall include a structurally descriptive generic name for the chemical substance that the Administrator may disclose to the public, subject to the condition that such generic name shall—

(i) be consistent with guidance developed by the Administrator under paragraph (4)(A); and

(ii) describe the chemical structure of the chemical substance as specifically as practicable while protecting those features of the chemical structure—

(I) that are claimed as confidential; and

(II) the disclosure of which would be likely to cause substantial harm to the competitive position of the person.

(2) INFORMATION GENERALLY NOT SUBJECT TO SUBSTANTIATION REQUIREMENTS.—Subject to subsection (f), the following information shall not be subject to substantiation requirements under paragraph (3):

(A) Specific information describing the processes used in manufacture or processing of a chemical substance, mixture, or article.

(B) Marketing and sales information.

(C) Information identifying a supplier or customer.

(D) In the case of a mixture, details of the full composition of the mixture and the respective percentages of constituents.

(E) Specific information regarding the use, function, or application of a chemical substance or mixture in a process, mixture, or article.

(F) Specific production or import volumes of the manufacturer or processor.

(G) Prior to the date on which a chemical substance is first offered for commercial distribution, the specific chemical identity of the chemical substance, including the chemical name, molecular formula, Chemical Abstracts Service number, and other information that would identify the specific chemical substance, if the specific chemical identity was claimed as confidential at the time it was submitted in a notice under section 5.

(3) SUBSTANTIATION REQUIREMENTS.—Except as provided in paragraph (2), a person asserting a claim to protect information from disclosure under this section shall substantiate the claim, in accordance with such rules as the Administrator has promulgated or may promulgate pursuant to this section.

(4) GUIDANCE.—The Administrator shall develop guidance regarding—

(A) the determination of structurally descriptive generic names, in the case of claims for the protection from disclosure of specific chemical identity; and

(B) the content and form of the statements of need and agreements required under paragraphs (4), (5), and (6) of subsection (d).

(5) CERTIFICATION.—An authorized official of a person described in paragraph (1)(A) shall certify that the statement required to assert a claim submitted pursuant to paragraph (1)(B), and any information required to substantiate a claim submitted pursuant to paragraph (3), are true and correct.

(d) EXCEPTIONS TO PROTECTION FROM DISCLOSURE.—Information described in subsection (a)—

(1) shall be disclosed to an officer or employee of the United States—

(A) in connection with the official duties of that person under any Federal law for the protection of health or the environment; or

(B) for a specific Federal law enforcement purpose;

(2) shall be disclosed to a contractor of the United States and employees of that contractor—

(A) if, in the opinion of the Administrator, the disclosure is necessary for the satisfactory performance by the contractor of a con- tract with the United States for the performance of work in connection with this Act; and

(B) subject to such conditions as the Administrator may specify;

(3) shall be disclosed if the Administrator determines that disclosure is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use;

(4) shall be disclosed to a State, political subdivision of a State, or tribal government, on written request, for the purpose of administration or enforcement of a law, if such entity has 1 or more applicable agreements with the Administrator that are consistent with the guidance developed under subsection (c)(4)(B) and ensure that the entity will take appropriate measures, and has adequate authority, to maintain the confidentiality of the information in accordance with procedures comparable to the procedures used by the Administrator to safeguard the information;

(5) shall be disclosed to a health or environmental professional employed by a Federal or State agency or tribal government or a treating physician or nurse in a nonemergency situation if such person provides a written statement of need and agrees to sign a written confidentiality agreement with the Administrator, subject to the conditions that—

(A) the statement of need and confidentiality agreement are consistent with the guidance developed under subsection (c)(4)(B);

(B) the statement of need shall be a statement that the person has a reasonable basis to suspect that—

(i) the information is necessary for, or will assist in—

(I) the diagnosis or treatment of 1 or more individuals; or

(II) responding to an environmental release or exposure; and

(ii) 1 or more individuals being diagnosed or treated have been exposed to the chemical substance or mixture concerned, or an environmental release of or exposure to the chemical substance or mixture concerned has occurred; and

(C) the person will not use the information for any purpose other than the health or environmental needs asserted in the statement of need, except as otherwise may be authorized by the terms of the agreement or by the person who has a claim under this section with respect to the information;

(6) shall be disclosed in the event of an emergency to a treating or responding physician, nurse, agent of a poison control center, public health or environmental official of a State, political subdivision of a State, or tribal government, or first responder (including any individual duly authorized by a Federal agency, State, political subdivision of a State, or tribal government who is trained in urgent medical care or other emergency procedures, including a police officer, firefighter, or emergency medical technician) if such person requests the information, subject to the conditions that such person shall—

(A) have a reasonable basis to suspect

that—

(i) a medical, public health, or environmental emergency exists;

(ii) the information is necessary for, or will assist in, emergency or first-aid diagnosis or treatment; or

(iii) 1 or more individuals being diagnosed or treated have likely been exposed to the chemical substance or mixture concerned, or a serious environmental release of or exposure to the chemical sub- stance or mixture concerned has occurred; and

(B) if requested by a person who has a claim with respect to the information under this section—

(i) provide a written statement of need and agree to sign a confidentiality agreement, as described in paragraph (5); and

(ii) submit to the Administrator such Statement of need and confidentiality agreement as soon as practicable, but not necessarily before the information is disclosed;

(7) may be disclosed if the Administrator determines that disclosure is relevant in a proceeding under this Act, subject to the condition that the disclosure is made in such a manner as to preserve confidentiality to the extent practicable without impairing the proceeding;

(8) shall be disclosed if the information is required to be made public under any other provision of Federal law; and

(9) shall be disclosed as required pursuant to discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law.

(e) DURATION OF PROTECTION FROM DISCLOSURE.—

(1) IN GENERAL.—Subject to paragraph (2),

subsection (f)(3), and section 8(b), the Administrator shall protect from disclosure information described in subsection (a)—

(A) in the case of information described in subsection (c)(2), until such time as—

(i) the person that asserted the claim notifies the Administrator that the person is withdrawing the claim, in which case the information shall not be protected from disclosure under this section; or

(ii) the Administrator becomes aware that the information does not qualify for protection from disclosure under this section, in which case the Administrator shall take any actions required under subsections (f) and (g); and

(B) in the case of information other than information described in subsection (c)(2)—

(i) for a period of 10 years from the date on which the person asserts the claim with respect to the information submitted to the Administrator; or

(ii) if applicable before the expiration of such 10-year period, until such time as—

(I) the person that asserted the claim notifies the Administrator that the person is withdrawing the claim, in which case the information shall not be protected from disclosure under this section; or

(II) the Administrator becomes aware that the information does not qualify for protection from disclosure under this section, in which case the Administrator shall take any actions required under subsections (f) and (g).

(2) EXTENSIONS.—

(A) IN GENERAL.—In the case of information other than information described in subsection (c)(2), not later than the date that is 60 days before the expiration of the period described in paragraph (1)(B)(i), the Administrator shall provide to the person that asserted the claim a notice of the impending expiration of the period.

(B) REQUEST.—

(i) IN GENERAL.—Not later than the date that is 30 days before the expiration of the period described in paragraph (1)(B)(i), a person reasserting the relevant claim shall submit to the Administrator a request for extension substantiating, in accordance with subsection (c)(3), the need to extend the period.

(ii) ACTION BY ADMINISTRATOR.— Not later than the date of expiration of the period described in paragraph (1)(B)(i), the Administrator shall, in accordance with subsection (g)(1)—

(I) review the request submitted under clause (i);

(II) make a determination regarding whether the claim for which the request was submitted continues to meet the relevant requirements of this section; and

(III) (aa) grant an extension of 10 years; or

(bb) deny the request.

(C) NO LIMIT ON NUMBER OF EXTENSIONS.—There shall be no limit on the number of extensions granted under this paragraph, if the Administrator determines that the relevant request under subparagraph (B)(i)—

(i) establishes the need to extend the period; and

(ii) meets the requirements established by the Administrator.

(f) REVIEW AND RESUBSTANTIATION.—

(1) DISCRETION OF ADMINISTRATOR.—The Administrator may require any person that has claimed protection for information from disclosure under this section, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to reassert and substantiate or resubstantiate the claim in accordance with this section—

(A) after the chemical substance is designated as a high-priority substance under section 6(b);

(B) for any chemical substance designated as an active substance under section 6 8(b)(5)(B)(iii); or

(C) if the Administrator determines that disclosure of certain information currently protected from disclosure would be important to assist the Administrator in conducting risk evaluations or promulgating rules under section 12 6.

(2) REVIEW REQUIRED.—The Administrator shall review a claim for protection of information from disclosure under this section and require any person that has claimed protection for that information, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to reassert and substantiate or resubstantiate the claim in accordance with this section—

(A) as necessary to determine whether the information qualifies for an exemption from disclosure in connection with a request for information received by the Administrator under section 552 of title 5, United States Code;

(B) if the Administrator has a reasonable basis to believe that the information does not qualify for protection from disclosure under this section; or

(C) for any chemical substance the Administrator determines under section 6(b)(4)(A) presents an unreasonable risk of injury to health or the environment.

(3) PERIOD OF PROTECTION.—If the Administrator requires a person to reassert and substantiate or resubstantiate a claim under this subsection, and determines that the claim continues to meet the relevant requirements of this section, the Administrator shall protect the information subject to the claim from disclosure for a period of 10 years from the date of such determination, subject to any subsequent requirement by the Administrator under this subsection.

(g) DUTIES OF ADMINISTRATOR.—

(1) DETERMINATION.—

(A) IN GENERAL.—Except for claims regarding information described in subsection (c)(2), the Administrator shall, subject to subparagraph (C), not later than 90 days after the receipt of a claim under subsection (c), and not later than 30 days after the receipt of a request for extension of a claim under subsection (e) or a request under subsection (b)(4)(C), review and approve, approve in part and deny in part, or deny the claim or request.

(B) REASONS FOR DENIAL.—If the Administrator denies or denies in part a claim or request under subparagraph (A) the Administrator shall provide to the person that asserted the claim or submitted the request a written statement of the reasons for the denial or denial in part of the claim or request.

(C) SUBSETS.—The Administrator shall—

(i) except with respect to information described in subsection (c)(2)(G), review all claims or requests under this section for the protection from disclosure of the specific chemical identity of a chemical substance; and

(ii) review a representative subset, comprising at least 25 percent, of all other claims or requests for protection from disclosure under this section.

(D) EFFECT OF FAILURE TO ACT.—The failure of the Administrator to make a decision regarding a claim or request for protection from disclosure or extension under this section shall not have the effect of denying or eliminating a claim or request for protection from disclosure.

(E) DETERMINATION OF REQUESTS UNDER SUBSECTION (b)(4)(C).—With respect to a request submitted under subsection (b)(4)(C), the Administrator shall, with the objective of ensuring that information relevant to the protection of health and the environment is disclosed to the extent practicable, determine whether the documentation provided by the person rebuts what shall be the presumption of the Administrator that the public interest in the disclosure of the information outweighs the public or proprietary interest in maintaining the protection for all or a portion of the information that the person has requested not be disclosed or for which disclosure be delayed.

(2) NOTIFICATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and subsections (b), (d), and (e), if the Administrator denies or denies in part a claim or request under paragraph (1), concludes, in accordance with this section, that the information does not qualify for protection from disclosure, intends to disclose information pursuant to subsection (d), or promulgates a rule under section 6(a) establishing a ban or phase-out with respect to a chemical substance or mixture, the Administrator shall notify, in writing, the person that asserted the claim or submitted the request of the intent of the Administrator to disclose the information or not protect the information from disclosure under this section. The notice shall be furnished by certified mail (return receipt requested), by personal delivery, or by other means that allows verification of the fact and date of receipt.

(B) DISCLOSURE OF INFORMATION.—Except as provided in subparagraph (C), the Administrator shall not disclose information under this subsection until the date that is 30 days after the date on which the person that asserted the claim or submitted the request receives notification under subparagraph (A).

(C) EXCEPTIONS.—

(i) FIFTEEN DAY NOTIFICATION.— For information the Administrator intends to disclose under subsections (d)(3), (d)(4), (d)(5), and (j), the Administrator shall not disclose the information until the date that is 15 days after the date on which the person that asserted the claim or submitted the request receives notification under subparagraph (A), except that, with respect to information to be disclosed under subsection (d)(3), if the Administrator deter- mines that disclosure of the information is necessary to protect against an imminent and substantial harm to health or the environment, no prior notification shall be necessary.

(ii) NOTIFICATION AS SOON AS PRACTICABLE.—For information the Administrator intends to disclose under paragraph (6) of subsection (d), the Administrator shall notify the person that submitted the information that the information has been disclosed as soon as practicable after disclosure of the information.

(iii) NO NOTIFICATION REQUIRED.—

Notification shall not be required—

(I) for the disclosure of information under paragraphs (1), (2), (7), or (8) of subsection (d); or

(II) for the disclosure of information for which—

(aa) the Administrator has provided to the person that asserted the claim a notice under subsection (e)(2)(A); and

(bb) such person does not submit to the Administrator a request under subsection (e)(2)(B) on or before the deadline established in subsection (e)(2)(B)(i).

(D) APPEALS.—

(i) ACTION TO RESTRAIN DISCLOSURE.—If a person receives a notification under this paragraph and believes the information is protected from disclosure under this section, before the date on which the information is to be disclosed pursuant to subparagraph (B) or (C) the person may bring an action to restrain disclosure of the information in—

(I) the United States district court of the district in which the complainant resides or has the principal place of business; or

(II) the United States District Court for the District of Columbia.

(ii) NO DISCLOSURE.—

(I) IN GENERAL.—Subject to subsection (d), the Administrator shall not disclose information that is the subject of an appeal under this paragraph before the date on which the applicable court rules on an action under clause (i).

(II) EXCEPTION.—Subclause (I) shall not apply to disclosure of information described under subsections (d)(4) and (j).

(3) REQUEST AND NOTIFICATION SYSTEM.—

The Administrator, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop a request and notification system that, in a format and language that is readily accessible and understandable, allows for expedient and swift access to information disclosed pursuant to paragraphs (5) and (6) of subsection (d).

(4) UNIQUE IDENTIFIER.—The Administrator shall—

(A)(i) develop a system to assign a unique identifier to each specific chemical identity for which the Administrator approves a re- quest for protection from disclosure, which shall not be either the specific chemical identity or a structurally descriptive generic term; and

(ii) apply that identifier consistently to all information relevant to the applicable chemical substance;

(B) annually publish and update a list of chemical substances, referred to by their unique identifiers, for which claims to protect the specific chemical identity from disclosure have been approved, including the expiration date for each such claim;

(C) ensure that any nonconfidential information received by the Administrator with respect to a chemical substance included on the list published under subparagraph (B) while the specific chemical identity of the chemical substance is protected from disclosure under this section identifies the chemical substance using the unique identifier; and

(D) for each claim for protection of a specific chemical identity that has been denied by the Administrator or expired, or that has been withdrawn by the person who asserted the claim, and for which the Administrator has used a unique identifier assigned under this paragraph to protect the specific chemical identity in information that the Administrator has made public, clearly link the specific chemical identity to the unique identifier in such information to the extent practicable.

(h) CRIMINAL PENALTY FOR WRONGFUL DISCLOSURE.—

(1) INDIVIDUALS SUBJECT TO PENALTY.—

(A) IN GENERAL.—Subject to subparagraph (C) and paragraph (2), an individual described in subparagraph (B) shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.

(B) DESCRIPTION.—An individual referred to in subparagraph (A) is an individual who—

(i) pursuant to this section, obtained possession of, or has access to, information protected from disclosure under this section; and

(ii) knowing that the information is protected from disclosure under this section, willfully discloses the information in any manner to any person not entitled to receive that information.

(C) EXCEPTION.—This paragraph shall not apply to any medical professional (including an emergency medical technician or other first responder) who discloses any information obtained under paragraph (5) or (6) of subsection (d) to a patient treated by the medical professional, or to a person authorized to make medical or health care decisions on behalf of such a patient, as needed for the diagnosis or treatment of the patient.

(2) OTHER LAWS.—Section 1905 of title 18, United States Code, shall not apply with respect to The publishing, divulging, disclosure, or making known of, or making available, information reported to or otherwise obtained by the Administrator under this Act.

(i) APPLICABILITY.—

(1) IN GENERAL.—Except as otherwise provided in this section, section 8, or any other applicable Federal law, the Administrator shall have no authority—

(A) to require the substantiation or resubstantiation of a claim for the protection from disclosure of information reported to or otherwise obtained by the Administrator under this Act prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act; or

(B) to impose substantiation or resubstantiation requirements, with respect to the protection of information described in subsection (a), under this Act that are more extensive than those required under this section.

(2) ACTIONS PRIOR TO PROMULGATION OF RULES.—Nothing in this Act prevents the Administrator from reviewing, requiring substantiation or re- substantiation of, or approving, approving in part, or denying any claim for the protection from disclosure of information before the effective date of such rules applicable to those claims as the Administrator may promulgate after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(j) ACCESS BY CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee..

~~**DISCLOSURE OF DATA**~~

~~(a) IN GENERAL.—Except as provided by subsection (b), any information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this Act [*15 U.S.C. §§ 2601* et seq.], which is exempt from disclosure pursuant to subsection (a) of *section 552 of title 5, United States Code*, by reason of subsection (b)(4) of such section, shall, notwithstanding the provisions of any other section of this Act [*15 U.S.C. §§ 2601* et seq.], not~~

be disclosed by the Administrator or by any officer or employee of the United States, except that such information—

(1) shall be disclosed to any officer or employee of the United States—
(A) in connection with the official duties of such officer or employee under any law for the protection of health or the environment, or
(B) for specific law enforcement purposes;

(2) shall be disclosed to contractors with the United States and employees of such contractors if in the opinion of the Administrator such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States entered into on or after the date of enactment of this Act [enacted Oct. 11, 1976] for the performance of work in connection with this Act [*15 U.S.C. §§ 2601* et seq.] and under such conditions as the Administrator may specify;

(3) shall be disclosed if the Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment; or

(4) may be disclosed when relevant in any proceeding under this Act [*15 U.S.C. §§ 2601* et seq.], except that disclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

In any proceeding under *section 552(a) of title 5, United States Code*, to obtain information the disclosure of which has been denied because of the provisions of this subsection, the Administrator may not rely on section 552(b)(3) of such title to sustain the Administrator's action.

(b) DATA FROM HEALTH AND SAFETY STUDIES.—

(1) Subsection (a) does not prohibit the disclosure of—
(A) any health and safety study which is submitted under this Act [*15 U.S.C. §§ 2601* et seq.] with respect to—
(i) any chemical substance or mixture which, on the date on which such study is to be disclosed has been offered for commercial distribution, or
(ii) any chemical substance or mixture for which testing is required under section 4 [*15 U.S.C. § 2603*] or for which notification is required under section 5 [*15 U.S.C. § 2604*], and
(B) any data reported to, or otherwise obtained by, the Administrator from a health and safety study which relates to a chemical substance or mixture described in clause (i) or (ii) of subparagraph (A).
This paragraph does not authorize the release of any data which discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture.

(2) If a request is made to the Administrator under subsection (a) of *section 552 of title 5, United States Code*, for information which is described in the first sentence of paragraph (1) and

which is not information described in the second sentence of such paragraph, the Administrator may not deny such request on the basis of subsection (b)(4), of such section.

(c) DESIGNATION AND RELEASE OF CONFIDENTIAL DATA.—

(1) In submitting data under this Act [*15 U.S.C. §§ 2601* et seq.], a manufacturer, processor, or distributor in commerce may (A) designate the data which such person believes is entitled to confidential treatment under subsection (a), and (B) submit such designated data separately from other data submitted under this Act [*15 U.S.C. §§ 2601* et seq.]. A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(2) (A) Except as provided by subparagraph (B), if the Administrator proposes to release for inspection data which has been designated under paragraph (1)(A), the Administrator shall notify, in writing and by certified mail, the manufacturer, processor, or distributor in commerce who submitted such data of the intent to release such data. If the release of such data is to be made pursuant to a request made under *section 552(a) of title 5, United States Code*, such notice shall be given immediately upon approval of such request by the Administrator. The Administrator may not release such data until the expiration of 30 days after the manufacturer, processor, or distributor in commerce submitting such data has received the notice required by this subparagraph.

(B) (i) Subparagraph (A) shall not apply to the release of information under paragraph (1), (2), (3), or (4) of subsection (a), except that the Administrator may not release data under paragraph (3) of subsection (a) unless the Administrator has notified each manufacturer, processor, and distributor in commerce who submitted such data of such release. Such notice shall be made in writing by certified mail at least 15 days before the release of such data, except that if the Administrator determines that the release of such data is necessary to protect against an imminent, unreasonable risk of injury to health or the environment, such notice may be made by such means as the Administrator determines will provide notice at least 24 hours before such release is made.

(ii) Subparagraph (A) shall not apply to the release of information described in subsection (b)(1) other than information described in the second sentence of such subsection.

(d) CRIMINAL PENALTY FOR WRONGFUL DISCLOSURE.—

(1) Any officer or employee of the United States or former officer or employee of the United States, who by virtue of such employment or official position has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (a), and who knowing that disclosure of such material is prohibited by such subsection, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $ 5,000 or imprisoned for not more than one year, or both. *Section 1905 of title 18, United States Code*, does not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported or otherwise obtained under this Act [*15 U.S.C. §§ 2601* et seq.].

~~(2) For the purposes of paragraph (1), any contractor with the United States who is furnished information as authorized by subsection (a)(2), and any employee of any such contractor, shall be considered to be an employee of the United States.~~

~~(e) ACCESS BY CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this Act [*15 U.S.C. §§ 2601* et seq.] shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.~~

SEC. 15 [§ 2614]. PROHIBITED ACTS

It shall be unlawful for any person to—

(1) fail or refuse to comply with ~~(A) any rule promulgated or order issued under section 4 [*15 U.S.C. § 2603*], (B) any requirement prescribed by section 5 or 6 [*15 U.S.C. § 2604* or *2605*], (C) any rule promulgated or order issued under section 5 or 6 [*15 U.S.C. § 2604* or *2605*], or (D)~~ any requirement of this title or any rule promulgated, order issued, or consent agreement entered into under this title, or any requirement of title II or any rule promulgated or order issued under title II;

(2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 or 6 [*15 U.S.C. § 2604* or *2605*], a rule or order under section 5 or 6 [*15 U.S.C. § 2604* or *2605*], or an order issued in action brought under section 5 or 7 [*15 U.S.C. § 2604* or *2606*];

(3) fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records, as required by this Act or a rule thereunder; or

(4) fail or refuse to permit entry or inspection as required by section 11 [*15 U.S.C. § 2610*].

SEC. 16 [§ 2615]. PENALTIES

(a) CIVIL.—

(1) Any person who violates a provision of section 15 or 409 [*15 U.S.C. § 2614* or *2689*] shall be liable to the United States for a civil penalty in an amount not to exceed $ ~~25,000~~37,500 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 15 or 409 [*15 U.S.C. § 2614* or *2689*].

(2) (A) A civil penalty for a violation of section 15 or 409 [*15 U.S.C. § 2614* or *2689*] shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with *section 554 of title 5,*

United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.
(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.
(C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—
(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or
(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,
the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) CRIMINAL.—(1) IN GENERAL any ~~Any~~ person who knowingly or willfully violates any provision of section 15 or 409 [*15 U.S.C. § 2614* or *2689*] shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than $ ~~25,000~~50,000 for each day of violation, or to imprisonment for not more than one year, or both.

(2) IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.—
(A) IN GENERAL.—Any person who knowingly and willfully violates any provision of section 15 or 409, and who knows at the time of the violation that the violation places an individual in imminent danger of death or serious bodily injury, shall be subject on conviction to a fine of not more than $250,000, or imprisonment for not more than 15 years, or both.
(B) ORGANIZATIONS.—Notwithstanding the penalties described in subparagraph (A), an organization that commits a knowing violation described in subparagraph (A) shall be subject on conviction to a fine of not more than $1,000,000 for each violation.

(C) INCORPORATION OF CORRESPONDING PROVISIONS.—Subparagraphs (B) through (F) of section 113(c)(5) of the Clean Air Act (42 U.S.C. 7413(c)(5)(B)–(F)) shall apply to the prosecution of a violation under this paragraph.

SEC. 17 [§ 2616]. SPECIFIC ENFORCEMENT AND SEIZURE

(a) SPECIFIC ENFORCEMENT.—

(1) The district courts of the United States shall have jurisdiction over civil actions to—
(A) restrain any violation of section 15 or 409 [*15 U.S.C. § 2614* or *2689*],
(B) restrain any person from taking any action prohibited by section 5, 6, or title IV [*15 U.S.C. § 2504*, *2605*, or *§§ 2681* et seq.], or by a rule or order under section 5, 6, or title IV [*15 U.S.C. § 2504*, *2605*, or *§§ 2681* et seq.],
(C) compel the taking of any action required by or under this Act [15 U.S.C. §§ §§ 2601 et seq.], or
(D) direct any manufacturer or processor of a chemical substance, mixture, or product subject to title IV [*15 U.S.C. §§ 2681* et seq.] manufactured or processed in violation of section 5, 6, or title IV [*15 U.S.C. § 2504*, *2605*, or *§§ 2681* et seq.], or a rule or order under section 5, 6, or title IV [*15 U.S.C. § 2504*, *2605* or *§§ 2681* et seq.], and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance, mixture, or product and, to the extent reasonably ascertainable, to other persons in possession of such substance, mixture, or product or expose to such substance, mixture, or product, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance, mixture, or product, whichever the person to which the requirement is directed elects.

(2) A civil action described in paragraph (1) may be brought—
(A) in the case of a civil action described in subparagraph (A) of such paragraph, in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 15 or 409 occurred or wherein the defendant is found or transacts business, or
(B) in the case of any other civil action described in such paragraph, in the United States district court for the judicial district wherein the defendant is found or transacts business.

In any such civil action process may be served on a defendant in any judicial district in which a defendant resides or may be found. Subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.

(b) SEIZURE.—Any chemical substance, mixture, or product subject to title IV [*15 U.S.C. §§ 2681* et seq.] or mixture which was manufactured, processed, or distributed in commerce in violation of this Act or any rule promulgated or order issued under this Act or any article containing such a substance or mixture shall be liable to be proceeded against, by process of libel for the seizure and condemnation of such substance, mixture, product, or article, in any district court of the United States within the jurisdiction of which such substance, mixture, product, or article is found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

SEC. 18 [§ 2617]. PREEMPTION

(a) IN GENERAL.—

(1) ESTABLISHMENT OR ENFORCEMENT.—Except as otherwise provided in subsections (c), (d), (e), (f), and (g), and subject to paragraph (2), no State or political subdivision of a State may establish or continue to enforce any of the following:

(A) DEVELOPMENT OF INFORMATION.—A statute or administrative action to require the development of information about a chemical substance or category of chemical substances that is reasonably likely to produce the same in-formation required under section 4, 5, or 6 in—

(i) a rule promulgated by the Administrator;

(ii) a consent agreement entered into by the Administrator; or

(iii) an order issued by the Administrator.

(B) CHEMICAL SUBSTANCES FOUND NOT TO PRESENT AN UNREASONABLE RISK OR RESTRICTED.—A statute, criminal penalty, or administrative action to prohibit or otherwise re-strict the manufacture, processing, or distribution in commerce or use of a chemical substance—

(i) for which the determination described in section 6(i)(1) is made, consistent with the scope of the risk evaluation under section (6)(b)(4)(D); or

(iii) for which a final rule is promulgated under section 6(a), after the effective date of the rule issued under section 6(a) for the chemical substance, consistent with the scope of the risk evaluation under section (6)(b)(4)(D).

(C) SIGNIFICANT NEW USE.—A statute or administrative action requiring the notification of a use of a chemical substance that the Administrator has specified as a significant new use and for which the Administrator has required notification pursuant to a rule promulgated under section 5.

(2) EFFECTIVE DATE OF PREEMPTION.—

Under this subsection, Federal preemption of statutes and administrative actions applicable to specific chemical substances shall not occur until the effective date of the applicable action described in paragraph (1) taken by the Administrator.

~~(a) EFFECT ON STATE LAW.—~~

~~(1) Except as provided in paragraph (2), nothing in this Act [*15 U.S.C. §§ 2601* et seq.] shall affect the authority of any State or political subdivision of a State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture.~~

~~(2) Except as provided in subsection (b)—~~

~~(A) if the Administrator requires by a rule promulgated under section 4 [*15 U.S.C. § 2603*] the testing of a chemical substance or mixture, no State or political subdivision may, after the effective date of such rule, establish or continue in effect a requirement for the testing of such~~

~~substance or mixture for purposes similar to those for which testing is required under such rule; and~~

~~(B) if the Administrator prescribes a rule or order under section 5 or 6 [*15 U.S.C. § 2604* or *2605*] (other than a rule imposing a requirement described in subsection (a)(6) of section 6 [*15 U.S.C. § 2605(a)(6)*]) which is applicable to a chemical substance or mixture, and which is designed to protect against a risk of injury to health or the environment associated with such substance or mixture, no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture, or an article containing such substance or mixture, and which is designed to protect against such risk unless such requirement (i) is identical to the requirement prescribed by the Administrator, (ii) is adopted under the authority of the Clean Air Act or any other Federal law, or (iii) prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures).~~

~~(b) EXEMPTION.—Upon application of a State or political subdivision of a State the Administrator may by rule exempt from subsection (a)(2), under such conditions as may be prescribed in such rule, a requirement of such State or political subdivision designed to protect against a risk of injury to health or the environment associated with a chemical substance, mixture, or article containing a chemical substance or mixture if—~~

~~(1) compliance with the requirement would not cause the manufacturing, processing, distribution in commerce, or use of the substance, mixture, or article to be in violation of the applicable requirement under this Act [*15 U.S.C. §§ 2601* et seq.] described in subsection (a)(2), and~~

~~(2) the State or political subdivision requirement (A) provides a significantly higher degree of protection from such risk than the requirement under this Act [*15 U.S.C. §§ 2601* et seq.] described in subsection (a)(2) and (B) does not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce.~~

(b) NEW STATUTES, CRIMINAL PENALTIES, OR ADMINISTRATIVE ACTIONS CREATING PROHIBITIONS OR OTHER RESTRICTIONS.—

(1) IN GENERAL.—Except as provided in subsections (c), (d), (e), (f), and (g), beginning on the date on which the Administrator defines the scope of a risk evaluation for a chemical substance under section 6(b)(4)(D) and ending on the date on which the deadline established pursuant to section 6(b)(4)(G) for completion of the risk evaluation expires, or on the date on which the Administrator publishes the risk evaluation under section 6(b)(4)(C), whichever is earlier, no State or political subdivision of a State may establish a statute, criminal penalty, or administrative action prohibiting or otherwise restricting the manufacture, processing, distribution in commerce, or use of such chemical substance that is a high-priority substance designated under section 6(b)(1)(B)(i).

(2) EFFECT OF SUBSECTION.—This subsection does not restrict the authority of a State or political subdivision of a State to continue to enforce any statute enacted, criminal penalty

assessed, or administrative action taken, prior to the date on which the Administrator defines and publishes the scope of a risk evaluation under section 6(b)(4)(D).

(c) SCOPE OF PREEMPTION.—Federal preemption under subsections (a) and (b) of statutes, criminal penalties, and administrative actions applicable to specific chemical substances shall apply only to—

(1) with respect to subsection (a)(1)(A), the chemical substances or category of chemical substances subject to a rule, order, or consent agreement under section 4, 5, or 6;
(2) with respect to subsection (b), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in the scope of the risk evaluation pursuant to section 6(b)(4)(D);
(3) with respect to subsection (a)(1)(B), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in any final action the Administrator takes pursuant to section 6(a) or 6(i)(1); or
(4) with respect to subsection (a)(1)(C), the uses of such chemical substances that the Administrator has specified as significant new uses and for which the Administrator has required notification pursuant to a rule promulgated under section 5.

(d) EXCEPTIONS.—

(1) NO PREEMPTION OF STATUTES AND ADMINISTRATIVE ACTIONS.—
(A) IN GENERAL.—Nothing in this Act, nor any amendment made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, nor any rule, standard of performance, risk evaluation, or scientific assessment implemented pursuant to this Act, shall affect the right of a State or a political subdivision of a State to adopt or enforce any rule, standard of performance, risk evaluation, scientific assessment, or any other protection for public health or the environment that—
(i) is adopted or authorized under the authority of any other Federal law or adopted to satisfy or obtain authorization or approval under any other Federal law;
(ii) implements a reporting, monitoring, or other information obligation for the chemical substance not otherwise required by the Administrator under this Act or required under any other Federal law;
(iii) is adopted pursuant to authority under a law of the State or political subdivision of the State related to water quality, air quality, or waste treatment or disposal, except to the extent that the action—
(I) imposes a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance; and
(II)(aa) addresses the same hazards and exposures, with respect to the same conditions of use as are included in the scope of the risk evaluation published pursuant to section 6(b)(4)(D), but is inconsistent with the action of the Administrator; or
(bb) would cause a violation of the applicable action by the Administrator under section 5 or 6; or
(iv) subject to subparagraph (B), is identical to a requirement prescribed by the Administrator.
(B) IDENTICAL REQUIREMENTS.—

(i) IN GENERAL.—The penalties and other sanctions applicable under a law of a State or political subdivision of a State in the event of noncompliance with the identical requirement shall be no more stringent than the penalties and other sanctions available to the Administrator under section 16 of this Act.

(ii) PENALTIES.—In the case of an identical requirement—

(I) a State or political subdivision of a State may not assess a penalty for a specific violation for which the Administrator has assessed an adequate penalty under section 16; and

(II) if a State or political subdivision of a State has assessed a penalty for a specific violation, the Administrator may not assess a penalty for that violation in an amount that would cause the total of the penalties assessed for the violation by the State or political subdivision of a State and the Administrator combined to exceed the maximum amount that may be assessed for that violation by the Administrator under section 16.

(2) APPLICABILITY TO CERTAIN RULES OR ORDERS.—

(A) PRIOR RULES AND ORDERS.—Nothing in this section shall be construed as modifying the preemptive effect under this section, as in effect on the day before the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, of any rule or order promulgated or issued under this Act prior to that effective date.

(B) CERTAIN CHEMICAL SUBSTANCES AND MIXTURES.—With respect to a chemical substance or mixture for which any rule or order was promulgated or issued under section 6 prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act with respect to manufacturing, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, nothing in this section shall be construed as modifying the preemptive effect of this section as in effect prior to the enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act of any rule or order that is promulgated or issued with respect to such chemical substance or mixture under section 6 after that effective date, unless the latter rule or order is with respect to a chemical substance or mixture containing a chemical substance and follows a designation of that chemical substance as a high-priority substance under section 6(b)(1)(B)(i), the identification of that chemical substance under section 6(b)(2)(A), or the selection of that chemical substance for risk evaluation under section 6(b)(4)(E)(iv)(II).

(e) PRESERVATION OF CERTAIN LAWS.—

(1) IN GENERAL.—Nothing in this Act, subject to subsection (g) of this section, shall—

(A) be construed to preempt or otherwise affect the authority of a State or political subdivision of a State to continue to enforce any action taken or requirement imposed or requirement enacted relating to a specific chemical substance before April 22, 2016, under the authority of a law of the State or political subdivision of the State that prohibits or otherwise restricts manufacturing, processing, distribution in commerce, use, or disposal of a chemical substance; or

(B) be construed to preempt or otherwise affect any action taken pursuant to a State law that was in effect on August 31, 2003.

(2) EFFECT OF SUBSECTION.—This subsection does not affect, modify, or alter the relationship between Federal law and laws of a State or political subdivision of a State pursuant to any other Federal law.

(f) WAIVERS.—

(1) DISCRETIONARY EXEMPTIONS.—Upon application of a State or political subdivision of a State, the Administrator may, by rule, exempt from subsection (a), under such conditions as may be pre-scribed in the rule, a statute, criminal penalty, or administrative action of that State or political subdivision of the State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that—

(A) compelling conditions warrant granting the waiver to protect health or the environment;

(B) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

(C) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

(D) in the judgment of the Administrator, the proposed requirement of the State or political subdivision of the State is designed to address a risk of a chemical substance, under the conditions of use, that was identified—

(i) consistent with the best available science;

(ii) using supporting studies con-ducted in accordance with sound and objective scientific practices; and

(iii) based on the weight of the scientific evidence.

(2) REQUIRED EXEMPTIONS.—Upon application of a State or political subdivision of a State, the Administrator shall exempt from subsection (b) a statute or administrative action of a State or political subdivision of a State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that—

(A)(i) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

(ii) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

(iii) the State or political subdivision of the State has a concern about the chemical substance or use of the chemical substance based in peer-reviewed science; or

(B) no later than the date that is 18 months after the date on which the Administrator has initiated the prioritization process for a chemical substance under the rule promulgated pursuant to section 6(b)(1)(A), or the date on which the Administrator publishes the scope of the risk evaluation for a chemical substance under section 6(b)(4)(D), whichever is sooner, the State or political subdivision of the State has enacted a statute or proposed or finalized an administrative action intended to prohibit or otherwise restrict the manufacture, processing, distribution in commerce, or use of the chemical substance.

(3) DETERMINATION OF A WAIVER REQUEST.—The duty of the Administrator to grant or deny a waiver application shall be nondelegable and

shall be exercised—

(A) not later than 180 days after the date on which an application under paragraph (1) is submitted; and

(B) not later than 110 days after the date on which an application under paragraph (2) is submitted.

(4) FAILURE TO MAKE A DETERMINATION.— If the Administrator fails to make a determination under paragraph (3)(B) during the 110-day period beginning on the date on which an application under paragraph (2) is submitted, the statute or administrative action of the State or political subdivision of the State that was the subject of the application shall not be considered to be an existing statute or administrative action for purposes of subsection (b) by reason of the failure of the Administrator to make a determination.

(5) NOTICE AND COMMENT.—Except in the case of an application approved under paragraph (9), the application of a State or political subdivision of a State under this subsection shall be subject to public notice and comment.

(6) FINAL AGENCY ACTION.—The decision of the Administrator on the application of a State or political subdivision of a State shall be—

(A) considered to be a final agency action; and

(B) subject to judicial review.

(7) DURATION OF WAIVERS.—A waiver granted under paragraph (2) or approved under paragraph (9) shall remain in effect until such time as the Administrator publishes the risk evaluation under section 6(b).

(8) JUDICIAL REVIEW OF WAIVERS.—Not later than 60 days after the date on which the Administrator makes a determination on an application of a State or political subdivision of a State under paragraph (1) or (2), any person may file a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit, which shall have exclusive jurisdiction over the determination.

(9) APPROVAL.—

(A) AUTOMATIC APPROVAL.—If the Administrator fails to meet the deadline established under paragraph (3)(B), the application of a State or political subdivision of a State under paragraph (2) shall be automatically approved, effective on the date that is 10 days after the deadline.

(B) REQUIREMENTS.—Notwithstanding paragraph (6), approval of a waiver application under subparagraph (A) for failure to meet the deadline under paragraph (3)(B) shall not be considered final agency action or be subject to judicial review or public notice and comment.

(g) SAVINGS.—

(1) NO PREEMPTION OF COMMON LAW OR STATUTORY CAUSES OF ACTION FOR CIVIL RELIEF OR CRIMINAL CONDUCT.—

(A) IN GENERAL.—Nothing in this Act, nor any amendment made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, nor any standard, rule, requirement, standard of performance, risk evaluation, or scientific assessment implemented pursuant to this Act, shall be construed to preempt, displace, or supplant any State or Federal common law rights or any State or Federal statute creating a remedy for civil relief, including those for civil damage, or a penalty for a criminal conduct.

(B) CLARIFICATION OF NO PREEMPTION.—Notwithstanding any other provision of this Act, nothing in this Act, nor any amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, shall preempt or preclude any cause of action for personal injury, wrongful death, property damage, or other injury based on negligence, strict liability, products liability, failure to warn, or any other legal theory of liability under any State law, maritime law, or Federal common law or statutory theory.

(2) NO EFFECT ON PRIVATE REMEDIES.—

(A) IN GENERAL.—Nothing in this Act, nor any amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, nor any rules, regulations, requirements, risk evaluations, scientific assessments, or orders issued pursuant to this Act shall be interpreted as, in either the plaintiff's or defendant's favor, dispositive in any civil action.

(B) AUTHORITY OF COURTS.—This Act does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State or Federal law with respect to the admission into evidence or any other use of this Act or rules, regulations, requirements, standards of performance, risk evaluations, scientific assessments, or orders issued pursuant to this Act.

SEC. 19 [§ 2618]. JUDICIAL REVIEW

(a) IN GENERAL.—

(1) (A) Except as otherwise provided in this title, not later than 60 days after the date on which a rule is promulgated under this title, title II, or title IV, or the date on which an order is issued under section 4, 5(e), 5(f), or 6(i)(1), ~~Not later than 60 days after the date of the promulgation of a rule under section 4(a), 5(a)(2), 5(b)(4), 6(a), 6(e), or 8 [*15 U.S.C. 2603(a), 2604(a)(2), 2604(b)(4), 2605(a), 2605(e),* or *2607*] or under title II or IV [*15 U.S.C. §§ 2641* et seq. or *2681* et seq.],~~ any person may file a petition for judicial review of such rule or order with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in which such person's principal place of business is located. Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule or order if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(B) ~~C~~Except as otherwise provided in this title, courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of an order issued under this title, other than an order under section 4, 5(e), 5(f), or 6(i)(1),~~subparagraph (A) or (B) of section 6(b)(1) [*15 U.S.C. § 2605(b)(1)(A)*~~

~~or (B)]~~ if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(C)(i) Not later than 60 days after the publication of a designation under section 6(b)(1)(B)(ii), any person may commence a civil action to challenge the designation.

(ii) The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over a civil action filed under this subparagraph.

(2) Copies of any petition filed under paragraph (1)(A) shall be transmitted forthwith to the Administrator and to the Attorney General by the clerk of the court with which such petition was filed. The provisions of *section 2112 of title 28, United States Code*, shall apply to the filing of the ~~rulemaking~~ record of proceedings on which the Administrator based the rule or order being reviewed under this section and to the transfer of proceedings between United States courts of appeals.

~~(3) For purposes of this section, the term "rulemaking record" means—~~

~~(A) the rule being reviewed under this section;~~

~~(B) in the case of a rule under section 4(a) [*15 U.S.C. § 2603(a)*], the finding required by such section, in the case of a rule under section 5(b)(4) [*15 U.S.C. § 2604(b)(4)*], the finding required by such section, in the case of a rule under section 6(a) [*15 U.S.C. § 2605(a)*] the finding required by section 5(f) or 6(a) [*15 U.S.C. § 2604(f)* or *2605(a)*], as the case may be, in the case of a rule under section 6(a) [*15 U.S.C. § 2605(a)*], the statement required by section 6(c)(1) [*15 U.S.C. § 2605(c)(1)*], and in the case of a rule under section 6(e) [*15 U.S.C. § 2605(e)*], the findings required by paragraph (2)(B) or (3)(B) of such section, as the case may be and in the case of a rule under title IV [*15 U.S.C. §§ 2681* et seq.], the finding required for the issuance of such a rule;~~

~~(C) any transcript required to be made of oral presentations made in proceedings for the promulgation of such rule;~~

~~(D) any written submission of interested parties respecting the promulgation of such rule; and~~

~~(E) any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of such rule, in a notice published in the Federal Register.~~

(b) ADDITIONAL SUBMISSIONS AND PRESENTATIONS; MODIFICATIONS.—If in an action under this section to review a rule, or an order under section 4, 5(e), 5(f), or 6(i)(1), the petitioner or the Administrator applies to the court for leave to make additional oral submissions or written presentations respecting such rule or order and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Administrator, the court may order the Administrator to provide additional opportunity to make such submissions and presentations. The Administrator may modify or set aside the rule or order being reviewed or make a new rule or order by reason of the additional submissions and presentations and shall file such modified or new rule or order with the return of such submissions and presentations. The court shall thereafter review such new or modified rule or order.

(c) STANDARD OF REVIEW.—

(1) (A) Upon the filing of a petition under subsection (a)(1) for judicial review of a rule or order, the court shall have jurisdiction (i) to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5, United States Code [*5 U.S.C. §§ 701* et seq.], and (ii) except as otherwise provided in subparagraph (B), to review such rule or order in accordance with chapter 7 of title 5, United States Code [*5 U.S.C. §§ 701* et seq.].

(B) *Section 706 of title 5, United States Code*, shall apply to review of a rule or order under this section, except that—

~~(i) in the case of review of a rule under section 4(a), 5(b)(4), 6(a), or 6(e) [*15 U.S.C. § 2603(a), 2604(b)(4), 2605(a), or 2605(e)*], the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record (as defined in subsection (a)(3)) taken as a whole;~~

(i) in the case of review of—

(I) a rule under section 4(a), 5(b)(4), 6(a) (including review of the associated determination under section 6(b)(4)(A)), or 6(e), the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record taken as a whole; and

(II) an order under section 4, 5(e), 5(f), or 6(i)(1), the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such order if the court finds that the order is not supported by substantial evidence in the record taken as a whole; and

(ii) the court may not review the contents and adequacy of any statement of basis and purpose required by section 553(c) of title 5, United States Code, to be incorporated in the rule or order, except as part of the record, taken as a whole.

~~(ii) in the case of review of a rule under section 6(a) [*15 U.S.C. § 2605(a)*], the court shall hold unlawful and set aside such rule if it finds that—~~

~~(I) a determination by the Administrator under section 6(c)(3) [*15 U.S.C. § 2605(c)(3)*] that the petitioner seeking review of such rule is not entitled to conduct (or have conducted) cross-examination or to present rebuttal submissions, or~~

~~(II) a rule of, or ruling by, the Administrator under section 6(c)(3) [*15 U.S.C. § 2605(c)(3)*] limiting such petitioner's cross-examination or oral presentations,~~

~~has precluded disclosure of disputed material facts which was necessary to a fair determination by the Administrator of the rulemaking proceeding taken as a whole; and section 706(2)(D) [*5 U.S.C. § 706(2)(D)*] shall not apply with respect to a determination, rule, or ruling referred to in subclause (I) or (II); and~~

~~(iii) the court may not review the contents and adequacy of—~~

~~(I) any statement required to be made pursuant to section 6(c)(1) [*15 U.S.C. § 2605(c)(1)*], or~~

~~(II) any statement of basis and purpose required by *section 553(c) of title 5, United States Code*, to be incorporated in the rule~~

~~except as part of a review of the rulemaking record taken as a whole.~~

~~The term "evidence" as used in clause (i) means any matter in the rulemaking record.~~

~~(C) A determination, rule, or ruling of the Administrator described in subparagraph (B)(ii) may be reviewed only in an action under this section and only in accordance with such subparagraph.~~

(2) The judgment of the court affirming or setting aside, in whole or in part, any rule or order reviewed in accordance with this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in *section 1254 of title 28, United States Code*.

(d) FEES AND COSTS.—The decision of the court in an action commenced under subsection (a), or of the Supreme Court of the United States on review of such a decision, may include an award of costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate.

(e) OTHER REMEDIES.—The remedies as provided in this section shall be in addition to and not in lieu of any other remedies provided by law.

SEC. 20 [§ 2619]. CITIZENS' CIVIL ACTIONS

(a) IN GENERAL.—Except as provided in subsection (b), any person may commence a civil action—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of this Act [*15 U.S.C. §§ 2601* et seq.] or any rule promulgated under section 4, 5, or 6 [*15 U.S.C. § 2603*, *2604*, or *2605*], or title II or IV [*15 U.S.C. §§ 2641* et seq. or *2681* et seq.], or order issued under section 4 or 5 [*15 U.S.C. § 2604*] or title II or IV [*15 U.S.C. §§ 2641* et seq. or *2681* et seq.] to restrain such violation, ~~or~~

(2) against the Administrator to compel the Administrator to perform any act or duty under this Act [*15 U.S.C. §§ 2601* et seq.] which is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district, except that no prior notification shall be required in the case of a civil action brought to compel a decision by the Administrator pursuant to section 18(f)(3)(B); or

(3) in the case of a civil action brought to compel a decision by the Administrator pursuant to section 18(f)(3)(B), after the date that is 60 days after the deadline specified in section 18(f)(3)(B).

(b) LIMITATION.—No civil action may be commenced—

(1) under subsection (a)(1) to restrain a violation of this Act [*15 U.S.C. §§ 2601* et seq.] or rule or order under this Act [*15 U.S.C. §§ 2601* et seq.] —

(A) before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator, and (ii) to the person who is alleged to have committed such violation, or (B) if the Administrator has commenced and is diligently prosecuting a proceeding for the issuance of an order under section 16(a)(2) [*15 U.S.C. § 2615(a)(2)*] to require compliance with this Act [*15 U.S.C. §§ 2601* et seq.] or with such rule or order or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this Act [*15 U.S.C. §§ 2601* et seq.] or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action; or

(2) under subsection (a)(2) before the expiration of 60 days after the plaintiff has given notice to the Administrator of the alleged failure of the administrator to perform an act or duty which is the basis for such action or, in the case of an action under such subsection for the failure of the Administrator to file an action under section 7 [*15 U.S.C. § 2606*], before the expiration of ten days after such notification.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

(c) GENERAL.—

(1) In any action under this section, the Administrator, if not a party, may intervene as a matter of right.

(2) The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(3) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this Act [*15 U.S.C. §§ 2601* et seq.] or any rule or order under this Act [*15 U.S.C. §§ 2601* et seq.] or to seek any other relief.

(d) CONSOLIDATION.—When two or more civil actions brought under subsection (a) involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions, upon application of such defendants to such actions which is made to a court in which any such action is brought, may, if such court in its discretion so

decides, be consolidated for trial by order (issued after giving all parties reasonable notice and opportunity to be heard) of such court and tried in—

(1) any district which is selected by such defendant and in which one of such actions is pending,

(2) a district which is agreed upon by stipulation between all the parties to such actions and in which one of such actions is pending, or

(3) a district which is selected by the court and in which one of such actions is pending.

The court issuing such an order shall give prompt notification of the order to the other courts in which the civil actions consolidated under the order are pending.

SEC. 21 [§ 2620]. CITIZENS' PETITIONS

(a) IN GENERAL.—Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 [*15 U.S.C. § 2603*, *2605*, or *2607*] or an order under section 4 or 5(e) or (f)~~(6)(b)(2)~~ [*15 U.S.C. § 2604(e)* or *2605(b)(2)*].

(b) PROCEDURES.—

(1) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a rule under section 4, 6, or 8 [*15 U.S.C. § 2603*, *2605*, or *2607*] or an order under section 4 or 5(e) or (f)~~, 6(b)(1)(A), or 6(b)(1)(B) [*15 U.S.C. § 2604(e)*, *2605(b)(1)(A)*, or (B)~~].

(2) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

(3) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with section 4, 5, 6, or 8 [*15 U.S.C. § 2603-2605*, or *2607*]. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial.

(4) (A) If the Administrator denies a petition filed under this section (or if the Administrator fails to grant or deny such petition within the 90-day period) the petitioner may commence a civil action in a district court of the United States to compel the Administrator to initiate a rulemaking proceeding as requested in the petition. Any such action shall be filed within 60 days after the Administrator's denial of the petition or, if the Administrator fails to grant or deny the petition within 90 days after filing the petition, within 60 days after the expiration of the 90-day period.

(B) In an action under subparagraph (A) respecting a petition to initiate a proceeding to issue a rule under section 4, 6, or 8 [*15 U.S.C. § 2603*, *2605*, or *2607*] or an order under section 4 or 5(e) or (f)~~6(b)(2)~~ [*15 U.S.C. § 2604(e)* or *2605(b)(2)*], the petitioner shall be provided an opportunity to have such petition considered by the court in a de novo proceeding. If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that—

(i) in the case of a petition to initiate a proceeding for the issuance of a rule under section 4 [*15 U.S.C. § 2603*] or an order under section 4 or 5(e) [*15 U.S.C. § 2604(e)*] —

(I) information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance to be subject to such rule or order; and

(II) in the absence of such information, the substance may present an unreasonable risk to health or the environment, or the substance is or will be produced in substantial quantities and it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to it; or

(ii) in the case of a petition to initiate a proceeding for the issuance of a rule under ~~section 6 or 8 [*15 U.S.C. § 2605* or *2607*] or an order under section 6(b)(2) [*15 U.S.C. § 2605(b)(2)*], there is a reasonable basis to conclude that the issuance of such a rule or order is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment~~section 6(a) or 8 or an order under section 5(f), the chemical substance or mixture to be subject to such rule or order presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use;

the court shall order the Administrator to initiate the action requested by the petitioner. If the court finds that the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this Act [*15 U.S.C. §§ 2601* et seq.] and there are insufficient resources available to the Administrator to take the action requested by the petitioner, the court may permit the Administrator to defer initiating the action requested by the petitioner until such time as the court prescribes.

(C) The court in issuing any final order in any action brought pursuant to subparagraph (A) may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(5) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

SEC. 22 [§ 2621]. NATIONAL DEFENSE WAIVER

The Administrator shall waive compliance with any provision of this Act [*15 U.S.C. §§ 2601* et seq.] upon a request and determination by the President that the requested waiver is necessary in the interest of national defense. The Administrator shall maintain a written record of the basis

upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this Act [*15 U.S.C. §§ 2601* et seq.]. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national defense purposes, unless, upon the request of the President, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national defense, in which event the Administrator shall submit notice thereof to the Armed Services Committees of the Senate and the House of Representatives.

SEC. 23 [§ 2622]. EMPLOYEE PROTECTION

(a) IN GENERAL.—No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act [*15 U.S.C. §§ 2601* et seq.];

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act [*15 U.S.C. §§ 2601* et seq.].

(b) REMEDY.—

(1) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 30 days after such alleged violation occurs, file (or have any person file on the employee's behalf) a complaint with the Secretary of Labor (hereinafter in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2) (A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting on behalf of the complainant) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If in response to a complaint filed under paragraph (1) the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) REVIEW.—

(1) Any employee or employer adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code [*5 U.S.C. §§ 701* et seq.].

(2) An order of the Secretary, with respect to which review could have been obtained under paragraph (1), shall not be subject to judicial review in any criminal or other civil proceeding.

(d) ENFORCEMENT.—Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) EXCLUSION.—Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the employee's employer (or any agent of the employer), deliberately causes a violation of any requirement of this Act [*15 U.S.C. §§ 2601* et seq.].

SEC. 24 [§ 2623]. EMPLOYMENT EFFECTS

(a) IN GENERAL.—The Administrator shall evaluate on a continuing basis the potential effects on employment (including reductions in employment or loss of employment from threatened plant closures) of—

(1) the issuance of a rule or order under section 4, 5, or 6 [*15 U.S.C. § 2603*, *2604*, or *2605*], or

(2) a requirement of section 5 or 6 [*15 U.S.C. § 2604* or *2605*].

(b) INVESTIGATIONS.

(1) Any employee (or any representative of an employee) may request the Administrator to make an investigation of—

(A) a discharge or layoff or threatened discharge or layoff of the employee, or

(B) adverse or threatened adverse effects on the employee's employment,

allegedly resulting from a rule or order under section 4, 5, or 6 [*15 U.S.C. § 2603*, *2604*, or *2605*] or a requirement of section 5 or 6 [*15 U.S.C. § 2604* or *2605*]. Any such request shall be made in writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request.

(2) (A) Upon receipt of a request made in accordance with paragraph (1) the Administrator shall (i) conduct the investigation requested, and (ii) if requested by any interested person, hold public hearings on any matter involved in the investigation unless the Administrator, by order issued within 45 days of the date such hearings are requested, denies the request for the hearings because the Administrator determines there are no reasonable grounds for holding such hearings. If the Administrator makes such a determination, the Administrator shall notify in writing the person requesting the hearing of the determination and the reasons therefor and shall publish the determination and the reasons therefor in the Federal Register.

(B) If public hearings are to be held on any matter involved in an investigation conducted under this subsection—

(i) at least five days' notice shall be provided the person making the request for the investigation and any person identified in such request, and

~~(ii) such hearings shall be held in accordance with section 6(c)(3) [*15 U.S.C. § 2605(c)(3)*], and~~

(~~i~~ii) each employee who made or for whom was made a request for such hearings and the employer of such employee shall be required to present information respecting the applicable matter referred to in paragraph (1)(A) or (1)(B) together with the basis for such information.

(3) Upon completion of an investigation under paragraph (2), the Administrator shall make findings of fact, shall make such recommendations as the Administrator deems appropriate, and shall make available to the public such findings and recommendations.

(4) This section shall not be construed to require the Administrator to amend or repeal any rule or order in effect under this Act [*15 U.S.C. §§ 2601* et seq.].

SEC. 25 [§ 2624]. STUDIES [REPEALED]

~~(a) INDEMNIFICATION STUDY.—The Administrator shall conduct a study of all Federal laws administered by the Administrator for the purpose of determining whether and under what conditions, if any, indemnification should be accorded any person as a result of any action taken by the Administrator under any such law. The study shall—~~

~~(1) include an estimate of the probable cost of any indemnification programs which may be recommended;~~

~~(2) include an examination of all viable means of financing the cost of any recommended indemnification; and~~

~~(3) be completed and submitted to Congress within two years from the effective date of enactment of this Act.~~

~~The General Accounting Office shall review the adequacy of the study submitted to Congress pursuant to paragraph (3) and shall report the results of its review to the Congress within six months of the date such study is submitted to Congress.~~

~~(b) CLASSIFICATION, STORAGE, AND RETRIEVAL STUDY.—The Council on Environmental Quality, in consultation with the Administrator, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the heads of other appropriate Federal departments or agencies, shall coordinate a study of the feasibility of establishing (1) a standard classification system for chemical substances and related substances, and (2) a standard means for storing and for obtaining rapid access to information respecting such substances. A report on such study shall be completed and submitted to Congress not later than 18 months after the effective date of enactment of this Act.~~

SEC. 26 [§ 2625]. ADMINISTRATION

(a) COOPERATION OF FEDERAL AGENCIES.—Upon request by the Administrator, each Federal department and agency is authorized—

(1) to make its services, personnel, and facilities available (with or without reimbursement) to the Administrator to assist the Administrator in the administration of this Act [*15 U.S.C. §§ 2601* et seq.]; and

(2) to furnish to the Administrator such information, data, estimates, and statistics, and to allow the Administrator access to all information in its possession as the Administrator may reasonably determine to be necessary for the administration of this Act [*15 U.S.C. §§ 2601* et seq.].

(b) FEES.—

(1) The Administrator may, by rule, require the payment ~~of a reasonable fee~~ from any person required to submit ~~data~~ information under section 4 or- information under section 4 or a notice or other information to be reviewed by the Administrator under section 5, or who manufactures or processes a chemical substance that is the subject of a risk evaluation under section 6(b), of a fee that is sufficient and not more than reasonably necessary to defray the cost related to such chemical substance of administering sections 4, 5, and 6, and collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under section 14 information on chemical substances under this title, including contractor costs incurred by the Administrator~~5 [*15 U.S.C. § 2603* or *2604*] to defray the cost of administering this Act [*15 U.S.C. §§ 2601* et seq.]. Such rules shall not provide for any fee in excess of $ 2,500 or, in the case of a small business concern, any fee in excess of $ 100.~~ In setting a fee under this paragraph, the Administrator shall take into account the ability to pay of the person required to pay such fee and the cost to the Administrator of carrying out the activities described in this paragraph ~~submit the data and the cost to the Administrator of reviewing such data~~. Such rules may provide for sharing such a fee in any case in which the expenses of testing are shared under section 4 or 5 [*15 U.S.C. § 2603* or *2604*].

(2) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the persons which qualify as small business concerns for purposes of paragraph (~~1~~4).

(c) ACTION WITH RESPECT TO CATEGORIES.—

(1) Any action authorized or required to be taken by the Administrator under any provision of this Act [*15 U.S.C. §§ 2601* et seq.] with respect to a chemical substance or mixture may be

taken by the Administrator in accordance with that provision with respect to a category of chemical substances or mixtures. Whenever the Administrator takes action under a provision of this Act [*15 U.S.C. §§ 2601* et seq.] with respect to a category of chemical substances or mixtures, any reference in this Act [*15 U.S.C. §§ 2601* et seq.] to a chemical substance or mixture (insofar as it relates to such action) shall be deemed to be a reference to each chemical substance or mixture in such category.

(2) For purposes of paragraph (1):

(A) The term "category of chemical substances" means a group of chemical substances the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this Act [*15 U.S.C. §§ 2601* et seq.], except that such term does not mean a group of chemical substances which are grouped together solely on the basis of their being new chemical substances.

(B) The term "category of mixtures" means a group of mixtures the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in the mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this Act [*15 U.S.C. §§ 2601* et seq.].

(d) ASSISTANCE OFFICE.—The Administrator shall establish in the Environmental Protection Agency an identifiable office to provide technical and other nonfinancial assistance to manufacturers and processors of chemical substances and mixtures respecting the requirements of this Act [*15 U.S.C. §§ 2601* et seq.] applicable to such manufacturers and processors, the policy of the Agency respecting the application of such requirements to such manufacturers and processors, and the means and methods by which such manufacturers and processors may comply with such requirements.

(e) FINANCIAL DISCLOSURES.—

(1) Except as provided under paragraph (3), each officer or employee of the Environmental Protection Agency and the Department of Health and Human Services~~, Education, and Welfare~~ who—

(A) performs any function or duty under this Act [*15 U.S.C. §§ 2601* et seq.], and

(B) has any known financial interest (i) in any person subject to this Act or any rule or order in effect under this Act [*15 U.S.C. §§ 2601* et seq.], or (ii) in any person who applies for or receives any grant or contract under this Act [*15 U.S.C. §§ 2601* et seq.],

shall, on February 1, 1978, and on February 1 of each year thereafter, file with the Administrator or the Secretary of Health and Human Services~~, Education, and Welfare~~ (hereinafter in this subsection referred to as the "Secretary"), as appropriate, a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be made available to the public.

(2) The Administrator and the Secretary shall—

(A) act within 90 days of the effective date of this Act [*15 U.S.C. § 2601* effective date note]—

(i) to define the term "known financial interests" for purposes of paragraph (1), and

(ii) to establish the methods by which the requirement to file written statements specified in paragraph (1) will be monitored and enforced, including appropriate provisions for review by the Administrator and the Secretary of such statements; and

(B) report to the Congress on June 1, 1978, and on June 1 of each year thereafter with respect to such statements and the actions taken in regard thereto during the preceding calendar year.

(3) The Administrator may by rule identify specific positions with the Environmental Protection Agency, and the Secretary may by rule identify specific positions with the Department of Health and Human Services~~, Education, and Welfare~~, which are of a nonregulatory or nonpolicymaking nature, and the Administrator and the Secretary may by rule provide that officers or employees occupying such positions shall be exempt from the requirements of paragraph (1).

(4) This subsection does not supersede any requirement of chapter 11 of title 18, United States Code [*18 U.S.C. §§ 201* et seq.].

(5) Any officer or employee who is subject to, and knowingly violates, this subsection or any rule issued thereunder, shall be fined not more than $ 2,500 or imprisoned not more than one year, or both.

(f) STATEMENT OF BASIS AND PURPOSE.—Any final order issued under this Act [*15 U.S.C. §§ 2601* et seq.] shall be accompanied by a statement of its basis and purpose. The contents and adequacy of any such statement shall not be subject to judicial review in any respect.

(g) ASSISTANT ADMINISTRATOR.—

(1) The President, by and with the advice and consent of the Senate, shall appoint an Assistant Administrator for Toxic Substances of the Environmental Protection Agency. Such Assistant Administrator shall be a qualified individual who is, by reason of background and experience, especially qualified to direct a program concerning the effects of chemicals on human health and the environment. Such Assistant Administrator shall be responsible for (A) the collection of ~~data~~information, (B) the preparation of studies, (C) the making of recommendations to the Administrator for regulatory and other actions to carry out the purposes and to facilitate the administration of this Act [*15 U.S.C. §§ 2601* et seq.], and (D) such other functions as the Administrator may assign or delegate.

(2) The Assistant Administrator to be appointed under paragraph (1) shall be in addition to the Assistant Administrators of the Environmental Protection Agency authorized by section 1(d) of Reorganization Plan No. 3 of 1970 [*5 U.S.C. § 903* note].

(3) FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund, to be known as the TSCA Service Fee Fund (in this paragraph referred to as the 'Fund'), consisting of such amounts as are deposited in the Fund under this paragraph.

(B) COLLECTION AND DEPOSIT OF FEES.—Subject to the conditions of subparagraph (C), the Administrator shall collect the fees described in this subsection and deposit those fees in the Fund.

(C) USE OF FUNDS BY ADMINISTRATOR.— Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in

advance in appropriations Acts, and shall be available without fiscal year limitation for use in defraying the costs of the activities described in paragraph (1).

(D) ACCOUNTING AND AUDITING.—

(i) ACCOUNTING.—The Administrator shall biennially prepare and submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that includes an accounting of the fees paid to the Administrator under this paragraph and amounts disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with sections 3515 and 3521 of title 31, United States Code.

(ii) AUDITING.—

(I) IN GENERAL.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of a covered executive agency.

(II) COMPONENTS OF AUDIT.—The annual audit required in accordance with sections 3515 and 3521 of title 31, United States Code, of the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

(aa) the fees collected and amounts disbursed under this subsection;

(bb) the reasonableness of the fees in place as of the date of the audit to meet current and projected costs of administering the provisions of this title for which the fees may be used; and

(cc) the number of requests for a risk evaluation made by manufacturers under section 6(b)(4)(C)(ii).

(III) FEDERAL RESPONSIBILITY.— The Inspector General of the Environmental Protection Agency shall conduct the annual audit described in subclause (II) and submit to the Administrator a report that describes the findings and any recommendations of the Inspector General resulting from the audit.

(4)AMOUNT AND ADJUSTMENT OF FEES; REFUNDS.—In setting fees under this section, the Administrator shall—

(A) prescribe lower fees for small business concerns, after consultation with the Administrator of the Small Business Administration;

(B) set the fees established under paragraph (1) at levels such that the fees will, in aggregate, provide a sustainable source of funds to annually defray—

(i) the lower of—

(I) 25 percent of the costs to the Administrator of carrying out sections 4, 5, and 6, and of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under section 14 information on chemical substances under this title, other than the costs to conduct and complete risk evaluations under section 6(b); or

(II) $25,000,000 (subject to adjustment pursuant to subparagraph (F)); and

(ii) the costs of risk evaluations specified in subparagraph (D);

(C) reflect an appropriate balance in the assessment of fees between manufacturers and processors, and allow the payment of fees by consortia of manufacturers or processors;

(D) notwithstanding subparagraph (B)—

(i) except as provided in clause (ii), for chemical substances for which the Administrator has granted a request from a manufacturer pursuant to section 6(b)(4)(C)(ii), establish the fee at a level sufficient to defray the full costs to the Administrator of conducting the risk evaluation under section 6(b);

(ii) for chemical substances for which the Administrator has granted a request from a manufacturer pursuant to section 6(b)(4)(C)(ii), and which are included in the 2014 update of the TSCA Work Plan for Chemical Assessments, establish the fee at a level sufficient to defray 50 percent of the costs to the Administrator of conducting the risk evaluation under section 6(b); and

(iii) apply fees collected pursuant to clauses (i) and (ii) only to defray the costs described in those clauses;

(E) prior to the establishment or amendment of any fees under paragraph (1), consult and meet with parties potentially subject to the fees or their representatives, subject to the condition that no obligation under the Federal Advisory Committee Act (5 U.S.C. App.) or subchapter II of chapter 5 of title 5, United States Code, is applicable with respect to such meetings;

(F) beginning with the fiscal year that is 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and every 3 years thereafter, after consultation with parties potentially subject to the fees and their representatives pursuant to subparagraph (E), increase or decrease the fees established under paragraph (1) as necessary to adjust for inflation and to ensure that funds deposited in the Fund are sufficient to defray—

(i) approximately but not more than 25 percent of the costs to the Administrator of carrying out sections 4, 5, and 6, and of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under section 14 information on chemical substances under this title, other than the costs to conduct and complete risk evaluations requested under section 6(b)(4)(C)(ii); and

(ii) the costs of risk evaluations specified in subparagraph (D); and

(G) if a notice submitted under section 5 is not reviewed or such a notice is withdrawn, refund the fee or a portion of the fee if no substantial work was performed on the notice.

(5)MINIMUM AMOUNT OF APPROPRIATIONS.—Fees may not be assessed for a fiscal year under this section unless the amount of appropriations for the Chemical Risk Review and Reduction program project of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for that program project for fiscal year 2014.

(6)TERMINATION.—The authority provided by this subsection shall terminate at the conclusion of the fiscal year that is 10 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act unless otherwise reauthorized or modified by Congress.

(h) SCIENTIFIC STANDARDS.—In carrying out sections 4, 5, and 6, to the extent that the Administrator makes a decision based on science, the Administrator shall use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science, and shall consider as applicable—

(1) the extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;

(2) the extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;

(3) the degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;

(4) the extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and

(5) the extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies, or models.

(i) WEIGHT OF SCIENTIFIC EVIDENCE.—The Administrator shall make decisions under sections 4, 5, and 6 based on the weight of the scientific evidence.

(j) AVAILABILITY OF INFORMATION.—Subject to section 14, the Administrator shall make available to the public—

(1) all notices, determinations, findings, rules, consent agreements, and orders of the Administrator under this title;

(2) any information required to be provided to the Administrator under section 4;

(3) a nontechnical summary of each risk evaluation conducted under section 6(b);

(4) a list of the studies considered by the Administrator in carrying out each such risk evaluation, along with the results of those studies; and

(5) each designation of a chemical substance under section 6(b), along with an identification of the information, analysis, and basis used to make the designations.

(k) REASONABLY AVAILABLE INFORMATION.—In carrying out sections 4, 5, and 6, the Administrator shall take into consideration information relating to a chemical substance or mixture, including hazard and exposure information, under the conditions of use, that is reasonably available to the Administrator.

(l) POLICIES, PROCEDURES, AND GUIDANCE.—

(1) DEVELOPMENT.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall develop any policies, procedures, and guidance the Administrator determines are necessary to carry out the amendments to this Act made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(2) REVIEW.—Not later than 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and not less frequently than once every 5 years thereafter, the Administrator shall—

(A) review the adequacy of the policies, procedures, and guidance developed under paragraph (1), including with respect to animal, nonanimal, and epidemiological test methods and procedures for assessing and determining risk under this title; and

(B) revise such policies, procedures, and guidance as the Administrator determines necessary to reflect new scientific developments or understandings.

(3) TESTING OF CHEMICAL SUBSTANCES AND MIXTURES.—The policies, procedures, and guidance developed under paragraph (1) applicable to testing chemical substances and mixtures shall—

(A) address how and when the exposure level or exposure potential of a chemical substance or mixture would factor into decisions to require new testing, subject to the condition that the Administrator shall not interpret the lack of exposure information as a lack of exposure or exposure potential; and

(B) describe the manner in which the Administrator will determine that additional information is necessary to carry out this title, including information relating to potentially exposed or susceptible populations.

(4) CHEMICAL SUBSTANCES WITH COMPLETED RISK ASSESSMENTS.—With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which the Administrator has published a completed risk assessment prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator may publish proposed and final rules under section 6(a) that are consistent with the scope of the completed risk assessment for the chemical substance and consistent with other applicable requirements of section 6.

(5) GUIDANCE.—Not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall develop guidance to assist interested persons in developing and submitting draft risk evaluations which shall be considered by the Administrator. The guidance shall, at a minimum, address the quality of the information submitted and the process to be followed in developing draft risk evaluations for consideration by the Administrator.

(m) REPORT TO CONGRESS.—

(1) INITIAL REPORT.—Not later than 6 months after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall submit to the Committees on Energy and Commerce and Appropriations of the House of Representatives and the Committees on Environment and Public Works and Appropriations of the Senate a report containing an estimation of—

(A) the capacity of the Environmental Protection Agency to conduct and publish risk evaluations under section 6(b)(4)(C)(i), and the resources necessary to conduct the minimum number of risk evaluations required under section 6(b)(2);

(B) the capacity of the Environmental Protection Agency to conduct and publish risk evaluations under section 6(b)(4)(C)(ii), the likely demand for such risk evaluations, and the anticipated schedule for accommodating that demand;
(C) the capacity of the Environmental Protection Agency to promulgate rules under section 6(a) as required based on risk evaluations conducted and published under section 6(b); and
(D) the actual and anticipated efforts of the Environmental Protection Agency to increase the Agency's capacity to conduct and publish risk evaluations under section 6(b).

(2) SUBSEQUENT REPORTS.—The Administrator shall update and resubmit the report described in paragraph (1) not less frequently than once every 5 years.

(n) ANNUAL PLAN.—

(1) IN GENERAL.—The Administrator shall inform the public regarding the schedule and the resources necessary for the completion of each risk evaluation as soon as practicable after initiating the risk evaluation.

(2) PUBLICATION OF PLAN.—At the beginning of each calendar year, the Administrator shall publish an annual plan that—
(A) identifies the chemical substances for which risk evaluations are expected to be initiated or completed that year and the resources necessary for their completion;
(B) describes the status of each risk evaluation that has been initiated but not yet completed; and
(C) if the schedule for completion of a risk evaluation has changed, includes an updated schedule for that risk evaluation.

(o) CONSULTATION WITH SCIENCE ADVISORY COMMITTEE ON CHEMICALS.—

(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall establish an advisory committee, to be known as the Science Advisory Committee on Chemicals (referred to in this subsection as the 'Committee').

(2) PURPOSE.—The purpose of the Committee shall be to provide independent advice and expert consultation, at the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of this title.

(3) COMPOSITION.—The Committee shall be composed of representatives of such science, government, labor, public health, public interest, animal protection, industry, and other groups as the Administrator determines to be advisable, including representatives that have specific scientific expertise in the relationship of chemical exposures to women, children, and other potentially exposed or susceptible subpopulations.

(4) SCHEDULE.—The Administrator shall convene the Committee in accordance with such schedule as the Administrator determines to be appropriate, but not less frequently than once every 2 years.

(p) PRIOR ACTIONS.—

(1) RULES, ORDERS, AND EXEMPTIONS.—Nothing in the Frank R. Lautenberg Chemical Safety for the 21st Century Act eliminates, modifies, or withdraws any rule promulgated, order issued, or exemption established pursuant to this Act before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(2) PRIOR-INITIATED EVALUATIONS.—Nothing in this Act prevents the Administrator from initiating a risk evaluation regarding a chemical substance, or from continuing or completing such risk evaluation, prior to the effective date of the policies, procedures, and guidance required to be developed by the Administrator pursuant to the amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(3) ACTIONS COMPLETED PRIOR TO COMPLETION OF POLICIES, PROCEDURES, AND GUIDANCE.—Nothing in this Act requires the Administrator to revise or withdraw a completed risk evaluation, determination, or rule under this Act solely because the action was completed prior to the development of a policy, procedure, or guidance pursuant to the amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

SEC. 27 [§ 2626]. DEVELOPMENT AND EVALUATION OF TEST METHODS

(a) IN GENERAL.—The Secretary of Health and Human Services~~, Education, and Welfare [Secretary of Health and Human Services]~~, in consultation with the Administrator and acting through the Assistant Secretary for Health, may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities for, projects for the development and evaluation of inexpensive and efficient methods (1) for determining and evaluating the health and environmental effects of chemical substances and mixtures, and their toxicity, persistence, and other characteristics which affect health and the environment, and (2) which may be used for the development of ~~test data~~information to meet the requirements of rules, orders, or consent agreements ~~promulgated~~ under section 4 [*15 U.S.C. § 2603*]. The Administrator shall consider such methods in prescribing under section 4 [*15 U.S.C. § 2603*] ~~standards~~ protocols and methodologies for the development of ~~test data~~information.

(b) APPROVAL BY SECRETARY.—No grant may be made or contract entered into under subsection (a) unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require. The Secretary may apply such conditions to grants and contracts under subsection (a) as the Secretary determines are necessary to carry out the purposes of such subsection. Contracts may be entered into under such subsection without regard to sections 3648 and 3709 of the Revised Statutes (*31 U.S.C. 529* [*31 U.S.C. § 3324(a)*, (b)]; *41 U.S.C. 5*).

SEC. 28 [§ 2627]. STATE PROGRAMS

(a) IN GENERAL.—For the purpose of complementing (but not reducing) the authority of, or actions taken by, the Administrator under this Act [*15 U.S.C. §§ 2601* et seq.], the Administrator may make grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks within the States to health or the environment which are associated with a chemical substance or mixture and with respect to which the Administrator is unable or is not likely to take action under this Act [*15 U.S.C. §§ 2601* et seq.] for their prevention or elimination. The amount of a grant under this subsection shall be determined by the Administrator, except that no grant for any State program may exceed 75 per centum of the establishment and operation costs (as determined by the Administrator) of such program during the period for which the grant is made.

(b) APPROVAL BY ADMINISTRATOR.—

(1) No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Administrator. Such an application shall be submitted in such form and manner as the Administrator may require and shall—

(A) set forth the need of the applicant for a grant under subsection (a),

(B) identify the agency or agencies of the State which shall establish or operate, or both, the program for which the application is submitted,

(C) describe the actions proposed to be taken under such program,

(D) contain or be supported by assurances satisfactory to the Administrator that such program shall, to the extent feasible, be integrated with other programs of the applicant for environmental and public health protection,

(E) provide for the making of such reports and evaluations as the Administrator may require, and

(F) contain such other information as the Administrator may prescribe.

(2) The Administrator may approve an application submitted in accordance with paragraph (1) only if the applicant has established to the satisfaction of the Administrator a priority need, as determined under rules of the Administrator, for the grant for which the application has been submitted. Such rules shall take into consideration the seriousness of the health effects in a State which are associated with chemical substances or mixtures, including cancer, birth defects, and gene mutations, the extent of the exposure in a State of human beings and the environment to chemical substances and mixtures, and the extent to which chemical substances and mixtures are manufactured, processed, used, and disposed of in a State.

~~(c) ANNUAL REPORTS.—Not later than six months after the end of each of the fiscal years 1979, 1980, and 1981, the Administrator shall submit to the Congress a report respecting the programs assisted by grants under subsection (a) in the preceding fiscal year and the extent to which the Administrator has disseminated information respecting such programs.~~

~~(d) AUTHORIZATION.—For the purpose of making grants under subsection (a), there are authorized to be appropriated $ 1,500,000 for each of the fiscal years 1982 and 1983. Sums appropriated under this subsection shall remain available until expended.~~

SEC. 29 [§ 2628]. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Administrator for purposes of carrying out this Act [*15 U.S.C. §§ 2601* et seq.] (other than sections 27 and 28 and subsections (a) and (c) through (g) of section 10 thereof [*15 U.S.C. §§ 2626* and *2627* and *2609(a)*, (c)-(g)]) $ 58,646,000 for the fiscal year 1982 and $ 62,000,000 for the fiscal year 1983. No part of the funds appropriated under this section may be used to construct any research laboratories.

SEC. 30 [§ 2629]. ANNUAL REPORT

The Administrator shall prepare and submit to the President and the Congress on or before January 1, 1978, and on or before January 1 of each succeeding year a comprehensive report on the administration of this Act [*15 U.S.C. §§ 2601* et seq.] during the preceding fiscal year. Such report shall include—

(1) a list of the testing required under section 4 [*15 U.S.C. § 2603*] during the year for which the report is made and an estimate of the costs incurred during such year by the persons required to perform such tests;

(2) the number of notices received during such year under section 5 [*15 U.S.C. § 2604*], the number of such notices received during such year under such section for chemical substances subject to a section 4 [*15 U.S.C. § 2603*] rule, order or consent agreement, and a summary of any action taken during such year under section 5(g) [*15 U.S.C. § 2604(g)*];

(3) a list of rules issued during such year under section 6 [*15 U.S.C. § 2605*];

(4) a list, with a brief statement of the issues, of completed or pending judicial actions under this Act [*15 U.S.C. §§ 2601* et seq.] and administrative actions under section 16 [*15 U.S.C. § 2615*] during such year;

(5) a summary of major problems encountered in the administration of this Act [*15 U.S.C. §§ 2601* et seq.]; and

(6) such recommendations for additional legislation as the Administrator deems necessary to carry out the purposes of this Act [*15 U.S.C. §§ 2601* et seq.].

SEC. 20. NO RETROACTIVITY.

Nothing in sections 1 through 19, or the amendments made by sections 1 through 19, shall be interpreted to apply retroactively to any State, Federal, or maritime legal action filed before the date of enactment of this Act.

SEC. 21. TREVOR'S LAW.

(a) PURPOSES.—The purposes of this section are—

(1) to provide the appropriate Federal agencies with the authority to help conduct investigations into potential cancer clusters;

(2) to ensure that Federal agencies have the authority to undertake actions to help address cancer clusters and factors that may contribute to the creation of potential cancer clusters; and

(3) to enable Federal agencies to coordinate with other Federal, State, and local agencies, institutes of higher education, and the public in investigating and addressing cancer clusters.

(b) DESIGNATION AND INVESTIGATION OF POTENTIAL CANCER CLUSTERS.—Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

SEC. 399V–6. DESIGNATION AND INVESTIGATION OF POTENTIAL CANCER CLUSTERS.

(a) DEFINITIONS.—In this section:

(1) CANCER CLUSTER.—The term 'cancer cluster' means the incidence of a particular cancer within a population group, a geographical area, and a period of time that is greater than expected for such group, area, and period.

(2) PARTICULAR CANCER.—The term 'particular cancer' means one specific type of cancer or a type of cancers scientifically proven to have the same cause.

(3) POPULATION GROUP.—The term 'population group' means a group, for purposes of calculating cancer rates, defined by factors such as race, ethnicity, age, or gender.

(b) CRITERIA FOR DESIGNATION OF POTENTIAL CANCER CLUSTERS.—

(1) DEVELOPMENT OF CRITERIA.—The Secretary shall develop criteria for the designation of potential cancer clusters.

(2) REQUIREMENTS.—The criteria developed under paragraph (1) shall consider, as appropriate—

(A) a standard for cancer cluster identification and reporting protocols used to determine when cancer incidence is greater than would be typically observed;
(B) scientific screening standards that ensure that a cluster of a particular cancer involves the same type of cancer, or types of cancers;
(C) the population in which the cluster of a particular cancer occurs by factors such as race, ethnicity, age, and gender, for purposes of calculating cancer rates;
(D) the boundaries of a geographic area in which a cluster of a particular cancer occurs so as not to create or obscure a potential cluster by selection of a specific area; and
(E) the time period over which the number of cases of a particular cancer, or the calculation of an expected number of cases, occurs.

(c) GUIDELINES FOR INVESTIGATION OF POTENTIAL CANCER CLUSTERS.—The Secretary, in consultation with the Council of State and Territorial Epidemiologists and representatives of State and local health departments, shall develop, publish, and periodically update guidelines for investigating potential cancer clusters. The guidelines shall—

(1) recommend that investigations of cancer clusters—

(A) use the criteria developed under subsection (b);
(B) use the best available science; and
(C) rely on a weight of the scientific evidence;

(2) provide standardized methods of reviewing and categorizing data, including from health surveillance systems and reports of potential cancer clusters; and

(3) provide guidance for using appropriate epidemiological and other approaches for investigations.

(d) INVESTIGATION OF CANCER CLUSTERS.—

(1) SECRETARY DISCRETION.—The Secretary—
(A) in consultation with representatives of the relevant State and local health departments, shall consider whether it is appropriate to conduct an investigation of a potential cancer cluster; and
(B) in conducting investigations shall have the discretion to prioritize certain potential cancer clusters, based on the availability of resources.

(2) COORDINATION.—In investigating potential cancer clusters, the Secretary shall coordinate with agencies within the Department of Health and Human Services and other Federal agencies, such as the Environmental Protection Agency.

(3) BIOMONITORING.—In investigating potential cancer clusters, the Secretary shall rely on all appropriate biomonitoring information collected under other Federal programs, such as the National Health and Nutrition Examination Survey. The Secretary may provide technical assistance for relevant biomonitoring studies of other Federal agencies.

(e) DUTIES.—The Secretary shall—

(1) ensure that appropriate staff of agencies within the Department of Health and Human Services are prepared to provide timely assistance, to the extent practicable, upon receiving a request to investigate a potential cancer cluster from a State or local health authority;

(2) maintain staff expertise in epidemiology, toxicology, data analysis, environmental health and cancer surveillance, exposure assessment, pediatric health, pollution control, community outreach, health education, laboratory sampling and analysis, spatial mapping, and informatics;

(3) consult with community members as investigations into potential cancer clusters are conducted, as the Secretary determines appropriate;

(4) collect, store, and disseminate reports on investigations of potential cancer clusters, the possible causes of such clusters, and the actions taken to address such clusters; and

(5) provide technical assistance for investigating cancer clusters to State and local health departments through existing programs, such as the Epi-Aids program of the Centers for Disease

Control and Prevention and the Assessments of Chemical Exposures Program of the Agency for Toxic Substances and Disease Registry.".

TITLE II—RURAL HEALTHCARE CONNECTIVITY

SEC. 201. SHORT TITLE.

This title may be cited as the "Rural Healthcare Connectivity Act of 2016".

SEC. 202. TELECOMMUNICATIONS SERVICES FOR SKILLED NURSING FACILITIES.

(a) IN GENERAL.—Section 254(h)(7)(B) of the Communications Act of 1934 (47 U.S.C. 254(h)(7)(B)) is amended—

(1) in clause (vi), by striking "and" at the end;

(2) by redesignating clause (vii) as clause (viii);

(3) by inserting after clause (vi) the following: "(vii) skilled nursing facilities (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a))); and"; and

(4) in clause (viii), as redesignated, by striking "clauses (i) through (vi)" and inserting "clauses (i) through (vii)".

(b) SAVINGS CLAUSE.—Nothing in subsection (a) shall be construed to affect the aggregate annual cap on Federal universal service support for health care providers under section 54.675 of title 47, Code of Federal Regulations, or any successor regulation.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply beginning on the date that is 180 days after the date of the enactment of this Act.

Message

From: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Sent: 9/2/2016 8:59:08 PM
To: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]; Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]
Subject: for Tuesday- asbestos
Attachments: 09-02-16Banning Asbestos.docx

Nichole and Sven

I'd appreciate if someone could give this a quick look on Tuesday. I do need fast-ish turnaround for reasons I'll explain when we stop playing phone tag. ☺ If it is faster for someone to provide me with some informal feedback by phone, I'm fine with that. The highlighted portion is one I particularly need a reality check for, and what I'm looking for here is a read on accuracy and anything I might have missed.

Thanks and have a great weekend

michal

Banning Asbestos – Options and Timelines

Option 1 – Designate asbestos as one of the first 10 chemicals to be evaluated under Section 6 of TSCA

- **Timeline:** Up to 3.5 years to do the risk evaluation, 1 year to propose a regulation, 1 year to finalize the regulation, taking up to 5.5 years in total.
- **Preemption:** Exempt from pause preemption, but states would be subject to final preemption, including on a definition of what asbestos is (note that California and Title II of TSCA do not seem to define asbestos the same way).
- **Pros:** A complete look at all foreseeable and current uses of asbestos, including chloralkali facilities (EPA chose not to ban this use in the 1989 rule) and imported asbestos-containing brake-pads (which were proposed for ban in 1989 but could be harder to regulate under Section 6 because of the House-originated replacement parts language).
- **Cons:** Length of time, potential that one or both known existing uses of asbestos would not be banned, preemption

Option 2 – Ban all abandoned uses of asbestos through a Significant New Use Rule (SNUR) under Section 5 of TSCA, which would have the impact of being a de facto ban on asbestos on most uses

- **Timeline:** No full risk evaluation. Just what it takes to propose and finalize the SNUR that would designate ANY use of asbestos (including imports) a "significant new use", require anyone using asbestos to notify EPA so that EPA can take needed action to protect against 'unreasonable risk'. Assume 2 years to propose and finalize. A similar proposal for nonylphenols (a class of chemicals that are no longer being used) is viewed as a de facto ban on any future or resumed uses of these chemicals.
- **Preemption:** There is no preemption of any state action to regulate chemicals EPA regulates under Section 5 of TSCA.
- **Pros:** Faster, no preemption, bans almost all uses without having to do an exhaustive risk evaluation
- **Cons:** It won't be possible to address asbestos membranes in chloralkali facilities, though it could be possible to address imported articles such as brake pads, and if there are existing commercial uses that are unknown to EPA, these would not be addressable.

Option 3– Option 2, and then move to Option 1 if the SNUR reveals existing commercial uses that are not currently known to EPA

- **Timeline:** 2 years for SNUR that bans most uses, then another 5-7 years to prioritize, study and regulate remaining uses
- **Preemption:** None for the uses that are subject to the SNUR, pause preemption and then final preemption for any of the remaining uses that are regulated under Section 6.

Message

From: Repko, Mary Frances [Mary.Frances.Repko@mail.house.gov]
Sent: 5/22/2016 8:30:04 PM
To: Trent Bauserman (trenton_d_bauserman@who.eop.gov) [trenton_d_bauserman@who.eop.gov]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: FW: TSCA- proposed counter

So you hear it from me, this came in before a 2 pm House Dem call to prep for our larger 3 pm negotiation. There is interest in the Senate side on this on the Dem side and I think on the R side but less strong. The House Rs seem uninterested, and House Ds want to understand this but it is a lot of changes. Wanted you to see the narrative, and get thoughts. -MF

From: Zumwalt, Bryan [mailto:Bryan_Zumwalt@americanchemistry.com]
Sent: Sunday, May 22, 2016 2:08 PM
To: Repko, Mary Frances
Cc: Ryan_Jackson@inhofe.senate.gov
Subject: TSCA- proposed counter

Mary Frances:

My apologies for the brief/quick call, but was driving in the rain and just a hair unsafe. So per our discussion I am providing below in writing what we would agree is a fair deal and will hopefully bring finality to the process. Obviously the gravity of the manufacturer requested pause for Work Plan chemicals warrants something other than eliminating low hazard, which is mutually beneficial given California and some of the environmental community's interest in eliminating. Assuming you can find alignment in your meeting this afternoon from our perspective the below would be a fair trade to bring closure to these issues.

Terms of a possible deal:

If pause preemption is not available for the rest of manufacturer requested Work Plan chemicals, the below should be the list of items resolved in this agreement- nothing major substantive or things epa or admin feels strongly about:

- Preemptive pause does not apply to manufacturer Work Plan chemicals
- Take EPA TA in section 21; because the current language creates constitutional problems as well
- Delete low hazard in 5 and 6 (bipartisan support)
- Get rid of "will present" throughout (industry request that has been consistently offered by senate in bipartisan offers to house)
- "Likely not" fix in Sec. 5 (EPA doesn't care)
- Delete nomenclature savings (EPA doesn't care; not necessary)

Hopefully this is received favorably. My understanding is that all of these Changes are supported by Senate Democrats, and not opposed by EPA. Bryan

Sent from my iPad

Message

From: Repko, Mary Frances [Mary.Frances.Repko@mail.house.gov]
Sent: 5/22/2016 8:46:28 PM
To: Bauserman, Trent D. EOP/WHO [Trenton_D_Bauserman@who.eop.gov]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: RE: TSCA- proposed counter

I am getting a no from my side. Both Rs and Ds.

-----Original Message-----
From: Bauserman, Trent D. EOP/WHO [mailto:Trenton_D_Bauserman@who.eop.gov]
Sent: Sunday, May 22, 2016 4:42 PM
To: Repko, Mary Frances; Distefano, Nichole
Subject: Re: TSCA- proposed counter

Thanks. Will defer to EPA on the policy. If the consensus is it makes for a stronger bill, we'd support that.

Do we know where the groups would be on this, Nichole?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.
From: Repko, Mary Frances
Sent: Sunday, May 22, 2016 4:30 PM
To: Bauserman, Trent D. EOP/WHO; Distefano, Nichole
Subject: FW: TSCA- proposed counter

So you hear it from me, this came in before a 2 pm House Dem call to prep for our larger 3 pm negotiation. There is interest in the Senate side on this on the Dem side and I think on the R side but less strong. The House Rs seem uninterested, and House Ds want to understand this but it is a lot of changes. Wanted you to see the narrative, and get thoughts. -MF

From: Zumwalt, Bryan [mailto:Bryan_Zumwalt@americanchemistry.com]
Sent: Sunday, May 22, 2016 2:08 PM
To: Repko, Mary Frances
Cc: Ryan_Jackson@inhofe.senate.gov
Subject: TSCA- proposed counter

Mary Frances:

My apologies for the brief/quick call, but was driving in the rain and just a hair unsafe. So per our discussion I am providing below in writing what we would agree is a fair deal and will hopefully bring finality to the process. Obviously the gravity of the manufacturer requested pause for Work Plan chemicals warrants something other than eliminating low hazard, which is mutually beneficial given California and some of the environmental community's interest in eliminating. Assuming you can find alignment in your meeting this afternoon from our perspective the below would be a fair trade to bring closure to these issues.

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* Get rid of "will present" throughout (industry request that has been consistently offered by senate in bipartisan offers to house)
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* Delete nomenclature sa?vings (EPA doesn't care; not necessary)

Hopefully this is received favorably. My understanding is that all of these Changes are supported by Senate Democrats, and not opposed by EPA. Bryan

Sent from my iPad

Message

From: Repko, Mary Frances [Mary.Frances.Repko@mail.house.gov]
Sent: 5/23/2016 1:46:20 PM
To: Trent Bauserman (trenton_d_bauserman@who.eop.gov) [trenton_d_bauserman@who.eop.gov]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: FW: Text of Bipartisan Managers Amendment
Attachments: Offer 5 22 16v2_clean.docx

So this offer is live. Our new Rules deadline is 11 am. Hoyer has signed off, as has Pelosi (though I sense discomfort from Kenneth), and Pallone still considering. Boxer is saying that Pelosi told her that Pallone was fine late last night. Jeff and Jackie trying to confirm that with Pallone. Might be helpful now for weigh in from the Administration to all parties if you are inclined. Hoyer and I spoke just before 9:15. He is holding to our decision rule - everyone has to agree over here or it doesn't go in.

From: Jackson, Ryan (Inhofe) [mailto:Ryan_Jackson@inhofe.senate.gov]
Sent: Monday, May 23, 2016 7:54 AM
To: Andres, Gary; Repko, Mary Frances; DeGraff, Kenneth; Carroll, Jeff; Cohen, Jacqueline; Brown, Maryam; McCarthy, David; Richards, Tina; Couri, Jerry; Sarley, Chris; Bloomquist, Mike; Kielty, Peter; Christian, Karen; Poirier, Bettina (EPW); Freedhoff, Michal (Markey); Deveny, Adrian (Merkley); Black, Jonathan (Tom Udall); Karakitsos, Dimitri (EPW)
Subject: RE: Text of Bipartisan Managers Amendment

Thank you all for your work on this and the final stretch on it this weekend.

Two things which are important:

- Unless I'm reading the draft Gary circulated this morning incorrectly, the attached does not contain the agreed to changes to pages 40 and 129 of the rules posted bill to reference excluding the 10 work plan chemicals from pause preemption. Please let me know if I'm mistaken about that. The changes to pages 40 and 129 need made. That was the agreement.

- Entirely separately, I know that the attached changes have been suggested and batted around the weekend privately among a number of our offices. The attached makes one final offer of excluding manufacturer requested work plan chemicals from pause, incorporates EPA TA to Section 21, eliminates low hazard designations, will present, and not likely language.

I understand there may be growing interest in making those changes. Attached is a short list of how those changes can be incorporated quickly into the rules posted draft if acceptable.

Thank you again for your work.

Ryan

From: Andres, Gary [mailto:Gary.Andres@mail.house.gov]
Sent: Monday, May 23, 2016 6:40 AM
To: Jackson, Ryan (Inhofe) <Ryan_Jackson@inhofe.senate.gov>; Andres, Gary <Gary.Andres@mail.house.gov>; Repko, Mary Frances <Mary.Frances.Repko@mail.house.gov>; DeGraff, Kenneth <kenneth.degraff@mail.house.gov>; Carroll, Jeff <Jeff.Carroll@mail.house.gov>; Cohen, Jacqueline <jackie.cohen@mail.house.gov>; Brown, Maryam <Maryam.Brown@mail.house.gov>; McCarthy, David

<David.McCarthy@mail.house.gov>; Richards, Tina <Tina.Richards@mail.house.gov>; Couri, Jerry <JerryCouri@mail.house.gov>; Sarley, Chris <Chris.Sarley@mail.house.gov>; Bloomquist, Mike <Mike.Bloomquist@mail.house.gov>; Kielty, Peter <Peter.Kielty@mail.house.gov>; Christian, Karen <Karen.Christian@mail.house.gov>; Poirier, Bettina (EPW) <Bettina_Poirier@epw.senate.gov>
Subject: Text of Bipartisan Managers Amendment

Good morning. Here is the text of the amendment we received last night. We plan to file it at 10 am. Thanks again to everyone for all your hard work and cooperation that brought this to a successful conclusion.

Best,

Gary

1) Delete first 10 WP and Manufacture-requested WP chemicals from pause
   - Page 129 line 21, after "6(b)(1)(B)(i)", insert a period and delete the rest of the paragraph

   - On p. 46, line 24 through p. 47 line 2, delete the following:

     "and that are not drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments"

2) EPA TA in section 21
   - Page 173 delete lines 4-7 and replace with "(iii) in clause (ii), by striking "section 6 or 8" and all that follows through the end of the clause and inserting "section 6(a) or 8 or an order under section 5(f), the chemical substance or mixture to be subject to such rule or order presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use"
   - Page 173 line 3 – strike "or (f)"

3) Delete Low Hazard in section 5
   - Page 20 line 9 make read "subparagraph (A), (B), or (C) of paragraph (3)"
   - Page 22 line 6, add "or" at the end
   - Page 22 line 18 delete "or"
   - Page 22 lines 19-24 – delete
   - Page 33 line 10 –delete "or in accordance with subsection (a)(3)(D) that the chemical substance is a low-hazard substance"

4) Delete Low Hazard in section 6
   - Page 38 Line 7, strike "except as provided in clause (iii),"
   - Page 38 line 17 – page 39 line 3 – delete
   - Page 41 line 12 – delete "or low-hazard"
   - Page 43 line 7 – delete "or a low-hazard substance"
   - Page 143 line 19, delete "or (iii)"

5) Remove "will present"
   - Page 12 line 19, add a new "(i) by striking "or will present"" (and re-designate the rest of the clauses as needed)
   - Page 20 line 21, delete "or will present"
   - Page 30 line 5, add a new "(iii) by striking "or will present"" (and re-designate the rest of the clauses as needed)
   - Page 35 line 17, add a new "(B) by striking "or will present"" (and re-designate the rest of the subparagraphs as needed)
   - Page 81 line 15, add a new "(ii) by striking "or will present"" (and re-designate the rest of the clauses as needed)
   - Page 84, line 18, add a new subsection (a) as follows (and re-designate the rest of the subsections as needed):

(a) Section 12(a)(2) of the Toxic Substances Control Act (15 U.S.C. 2611(a)) is amended by striking "will present" and replacing with "presents"

6) Remove "likely not" in section 5
   - Page 22 line 8 change "likely not" to "not likely"
   - Page 33 line 9 change "likely not" to "not likely"

7) Delete nomenclature savings clause
   - Page 67 lines 14-19 – delete

Message

From: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Sent: 5/20/2016 6:00:05 PM
To: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: Re: will you guys be sure to do a totally thorough x-ref check?

No I can't. I need to go to LDS. We wanted to remove all the first WP chemicals from pause. They drafted it weird to apply only to first 10 (ie in event you guys decide to do all 90 in those first 6 months). Not what was asked to be drafted. Not a problem per se because you guys won't be able to afford all 90. But not what was asked for. I don't know who sent what text to who on House side and who agreed - that iis a question for the House.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

From: Distefano, Nichole
Sent: Friday, May 20, 2016 1:55 PM
To: Freedhoff, Michal (Markey)
Subject: Re: will you guys be sure to do a totally thorough x-ref check?

Yes. Can get on phone around 2:15. Bettina also asking and we want to make sure we understand.

Sent from my iPhone

On May 20, 2016, at 1:51 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

> This one that I just sent MF?
> I am confused by their drafting on the preemption fix.
> "(1) IN GENERAL.—Except as provided in subsections (c), (d), (e), (f), and (g), beginning on the date on which the Administrator defines the scope of a risk evaluation for a chemical substance under section 6(b)(4)(D) and ending on the date on which the deadline established pursuant to section 6(b)(4)(G) for completion of the risk evaluation expires, or on the date on which the Administrator publishes the risk evaluation under section 6(b)(4)(C), whichever is earlier, no State or political subdivision of a State 16 may establish a statute, criminal penalty, or administrative action prohibiting or otherwise restricting 18 the manufacture, processing, distribution in commerce, or use of such chemical substance that is a high-priority substance designated under 6(b)(1)(B)(i), such chemical substance that has been identified under section 6(b)(2)(A) (except for the first 10 chemical substances so identified), or such chemical substance that has been selected for risk evaluation under section 6(b)(4)(E)(iv)(II).
> Section 6(b)(2)(A) says
> "(2) INITIAL RISK EVALUATIONS AND SUBSEQUENT DESIGNATIONS OF HIGH- AND LOW-PRIORITY SUBSTANCES.— "(A) INITIAL RISK EVALUATIONS.—Not later than 180 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall ensure that risk evaluations are being conducted on at least 10 chemical substances drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments and shall publish the list of such chemical substances during the 180 day period.
> The edit they were supposed to make read this way (and what I sent you)
> "(1) IN GENERAL.—Except as provided in subsections (c), (d), (e), (f), and (g), beginning on the date on which the Administrator defines the scope of a risk evaluation for a chemical substance under section 6(b)(4)(D) and ending on the date on which the deadline established pursuant to section 6(b)(4)(G) for completion of the risk evaluation expires, or on the date on which the Administrator publishes the risk evaluation under section 6(b)(4)(C), whichever is earlier, no State or political subdivision of a State 16 may establish a statute, criminal penalty, or administrative action prohibiting or otherwise restricting 18

the manufacture, processing, distribution in commerce, or use of such chemical substance that is a high-priority substance designated under 6(b)(1)(B)(i), ~~such chemical substance that has been identified under section 6(b)(2)(A),~~ or such chemical substance that has been selected for risk evaluation under section 6(b)(4)(E)(iv)(II).

Pasting what I sent you originally (obviously page/lines are wrong now) Page 4, lines 4 and 5: strike: ", such chemical substance that has been identified under section 6(b)(2)(A)" (exempts first 10 WP chemicals from pause)

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742
Connect with Senator Markey

From: Distefano, Nichole [mailto:DiStefano.Nichole@epa.gov]
Sent: Friday, May 20, 2016 1:50 PM
To: Freedhoff, Michal (Markey)
Subject: Re: will you guys be sure to do a totally thorough x-ref check?

We are but are you tracking an issue with 10 wk pln. We are looking at now.

Sent from my iPhone

On May 20, 2016, at 1:42 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

> Michal Ilana Freedhoff, Ph.D.
> Director of Oversight & Investigations
> Office of Senator Edward J. Markey
> 255 Dirksen Senate Office Building
> Washington, DC 20510
> 202-224-2742
> Connect with Senator Markey

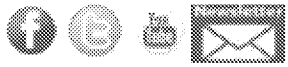
Message

From: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Sent: 5/21/2016 1:39:13 AM
To: Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]
CC: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]; Schmit, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7077ecbac4914a00ad465398f92bbe78-Schmit, Ryan]
Subject: RE: section 21 drafting

I assume you are sending this back in your set (along w other similar issues)? I am putting some of these into our document as well.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey



From: Jones, Jim [mailto:Jones.Jim@epa.gov]
Sent: Thursday, May 19, 2016 9:24 PM
To: Freedhoff, Michal (Markey)
Cc: Distefano, Nichole; Schmit, Ryan
Subject: section 21 drafting

Michal, let us know if this works (or not). Jim

> On p 174 of the HLC 5/19 3:23 pm draft, strike lines 11-14 and replace it with:
>
> (iii) in clause (ii), by striking "section 6 or 8" and all that follows through the end of the clause and inserting "section 6(a) or 8 or an order under section 5(f), the chemical substance or mixture to be subject to such rule or order presents or will present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use"

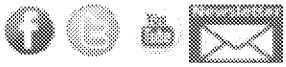
Message

From: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Sent: 5/21/2016 2:18:20 AM
To: Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: FW: Technicals.docx
Attachments: Technicals.docx

Pls take a look and let me know if there are any issues.
Thx
m

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey



Technical Edits - Senate

1) Conform section 5(f) with modification that was made in section 5(e) by making the following changes
   - Before Page 30 line 22 – in the matter following section 5(f)(2)(C) of *current TSCA*, insert "and a person may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, only in compliance with the final rule" after "and apply with respect to such rule"
   - Before Page 31 line 12 – at the end of section 5(f)(3)(A)(i) of *current TSCA*, insert ", and the submitter of the notice may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, only in compliance with the order" after "finding was made under paragraph (1)".

2) Conforming change to reflect that low-hazard substances are a subset of low-priority substances
   - Pg 38 Line 7, strike "except as provided in clause (iii)"

3) Conforming change to reflect intent of first 10 workplan chemical pause preemption exemption
   - On page 40, line 24, strike "at least"
   - On page 129, lines 21-23, strike ", such chemical substance that has been identified under section 6(b)(2)(A) (except for the first 10 chemical substances so identified),"

4) Conforming change with intent to ensure there is a way for manufacturers to request risk evaluations on PBTs. The date in base text would not allow for this because there would be no risk evaluation or fee rule in place at that time.
   - Pg 62, Line 1, strike "date of enactment of the Frank R Lautenberg Chemical Safety for the 21st Century Act" and insert "Administrator publishes a rule under section 6(b)(4)(B)".

5) Conform savings clause in Confidential Information to agreed-upon intent
- On page 107 line 4, insert a period after "information" and delete the rest of the paragraph. AND

- Make ONE of the following two sets of changes to restore the intent:
  a) page 109 line 3 delete "and"
  b) page 109 line 6 delete the period, and insert "; and (9) shall be subject to the condition that nothing in this Act that nothing in this Act prohibits the disclosure of any information through discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or state law.

  OR

  a) page 96 line 13 delete "or"
  b) page 96 line 22 delete the period, add "; or"

c) page 96 line 23 insert "(C) any information through discovery subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law."

6) Technical clarification to ensure both subsections that apply to the information under the provision are named.
- Page 109 lines 11 and 12 – strike "described in subsection (a)" and replace with "subject to subsections (a) and (c)"

7) Technical edit to clarify that non-confidential information about a chemical whose identity is non-public is made public and associated with the unique identifier for the chemical
- Page 122 line 4 – after "unique identifier" insert "and is made public"

8) Conforms to section 18(a) and 18(b)(1) insertions of "criminal penalty" that were requested by the House
- Page 130 line 12, after "statute enacted," insert "criminal penalty,"

9) Edit to conform text to section 18(a)(1)(A)
- Page 130 Line 16, should read "4, 5, or 6"

10) Technical correction for language on scope of preemption.
- On p. 130, strike lines 17 – 21, and insert "(2) with respect to subsection (b), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in the scope of the risk evaluation pursuant to section 6(b)(4)(D); (3) with respect to subsection (a)(1)(B), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in any final action the Administrator takes pursuant to section 6(a) or 6(i)(1); or"
- On page 130 line 22, strike "(3)" and insert "(4)"

11) Conforming change to reflect that low-hazard is a subset of low-priority (which itself is judicially reviewable)
- Page 143 line 19, delete "or (iii)"

12) Conforming change to ensure that citizen suits are held to the same standard as actions taken by EPA (raises Constitutional issues if not done)
- Page 173 delete lines 4-7 and replace with "(iii) in clause (ii), by striking "section 6 or 8" and all that follows through the end of the clause and inserting "section 6(a) or 8 or an order under section 5(f), the chemical substance or mixture to be subject to such rule or order presents or will present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use"

Message

From: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Sent: 5/23/2016 2:23:46 AM
To: Trenton Bauserman [Trenton_D_Bauserman@who.eop.gov]; Stephenne Harding [Stephenne_S_Harding@ceq.eop.gov]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: Re: Citizen petitions under TSCA

SCHF/NRDC ok w citizen petition change and entire deal. Would prefer citizen petitions not change but ok if has to be that way.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

From: Freedhoff, Michal (Markey)
Sent: Sunday, May 22, 2016 8:57 PM
To: Trenton Bauserman; Stephenne Harding; Nichole DiStefano
Subject: Fw: Citizen petitions under TSCA

It is absurd to be arguing about citizen petitions vs states directly regulating when you look at the statistics below.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

From: Freedhoff, Michal (Markey)
Sent: Sunday, May 22, 2016 8:51 PM
To: Poirier, Bettina (EPW); Albritton, Jason (EPW); Mary Frances Repko
Cc: Freedhoff, Michal (Markey)
Subject: Citizen petitions under TSCA

See https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-21

I've asked EPA for their tally for TSCA and the CAA but don't know how timely it will be.

The analysis is imprecise, because some ?petitions are for more than one EPA action. But a quick tally on petitions since 2007 shows:

Section 8: 6 denied, 1 partially granted?, 1 granted and then withdrawn
Section 6: 11 denied, 1 granted
Section 4: 4 denied
Sections 401/403 - 1 granted
Another was referred to regulation under another federal statute per section 9.

I don't find this remotely compelling.

M

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

Message

From: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Sent: 5/23/2016 2:47:26 AM
To: Harding, Stephenne S. EOP/CEQ [Stephenne_S_Harding@ceq.eop.gov]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
CC: Bauserman, Trent D. EOP/WHO [Trenton_D_Bauserman@who.eop.gov]
Subject: Re: Citizen petitions under TSCA

Help from you all along those lines would still be much appreciated!

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)
Original Message
From: Harding, Stephenne S. EOP/CEQ
Sent: Sunday, May 22, 2016 10:45 PM
To: Freedhoff, Michal (Markey); Distefano, Nichole
Cc: Bauserman, Trent D. EOP/WHO
Subject: Re: Citizen petitions under TSCA

Well hopefully they call all see their way to yes tonight....

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.
Original Message
From: Freedhoff, Michal (Markey)
Sent: Sunday, May 22, 2016 10:33 PM
To: Distefano, Nichole
Cc: Harding, Stephenne S. EOP/CEQ; Bauserman, Trent D. EOP/WHO
Subject: Re: Citizen petitions under TSCA

Yes I'd have thought that he would choose allowing states to regulate the most toxic chemicals known to EPA without as much likelihood they'd be subjected to pause preemption instead of fighting to allow NGOS to continue to lose litigation aimed at compelling EPA to regulate. But what do I know?

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)
Original Message
From: Distefano, Nichole
Sent: Sunday, May 22, 2016 10:31 PM
To: Freedhoff, Michal (Markey)
Cc: Harding, Stephenne S. EOP/CEQ; Bauserman, Trent D. EOP/WHO
Subject: Re: Citizen petitions under TSCA

Didn't Pallone say his main focus was on preemption or did I make that up? If so, this seems like a good trade from his perspective.

Sent from my iPhone

> On May 22, 2016, at 10:27 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:
>
> No one knows what Pallone does. Having NRDC/SCHF helpful obv.
>
> Michal Ilana Freedhoff, Ph.D.
> Director of Oversight and Investigations
> Office of Senator Edward J. Markey (D-MA)
> Original Message
> From: Harding, Stephenne S. EOP/CEQ
> Sent: Sunday, May 22, 2016 10:26 PM
> To: Freedhoff, Michal (Markey); Bauserman, Trent D. EOP/WHO; Nichole DiStefano
> Subject: Re: Citizen petitions under TSCA
>
>
> Thanks. Any hold outs on accepting?
>
> Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.
> From: Freedhoff, Michal (Markey)
> Sent: Sunday, May 22, 2016 10:24 PM